ORAL ARGUMENT NOT YET SCHEDULED

BRIEF FOR RESPONDENTS

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

NOS. 15-1240 & 15-1284

MONTGOMERY COUNTY, MARYLAND, ET AL.,

PETITIONERS,

V.

FEDERAL COMMUNICATIONS COMMISSION
AND UNITED STATES OF AMERICA,

RESPONDENTS.

ON PETITIONS FOR REVIEW OF AN ORDER OF THE
FEDERAL COMMUNICATIONS COMMISSION

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JURISDICTION

The *Order* on review was released on October 21, 2014, and a summary of the *Order* was published in the Federal Register on January 8, 2015. *Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies*, 29 FCC Rcd 12865 (2014) ("*Order*") (JA___); 80 Fed. Reg. 1238-01 (Jan. 8, 2015). On March 6, 2015, Montgomery County, Maryland timely filed a petition for review in this Court. On March 9, 2015, the City of Bellevue, Washington; City of Los Angeles, California; City of McAllen, Texas; City of Ontario, California; and the Texas Coalition of

Cities for Utility Issues timely filed a petition for review in the U.S. Court of Appeals for the D.C. Circuit. That appeal was transferred to this Court on March 17, 2015, and the cases were consolidated on March 19, 2015. This Court's jurisdiction rests on 47 U.S.C. § 402(a) and 28 U.S.C. § 2342(1).

QUESTIONS PRESENTED

Congress enacted Section 6409(a) of the Spectrum Act, 47 U.S.C. § 1455(a), to limit the ability of State and local governments to block wireless providers[1] from placing new equipment on existing wireless installations. It provides that a State or local government "may not deny, and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station." The statute does not define any of its key terms, other than "eligible facilities request."

To limit disputes between wireless providers and States and localities over the types of facility modifications covered by Section 6409(a), the Commission adopted rules in the *Order* that flesh out this ambiguous statutory language. This case presents two issues for decision:

[1] For ease of reference, we use the term "wireless provider" throughout our brief to encompass any entity that would be eligible to file a facility modification application with a State or local government under Section 6409(a).

(1) Whether the Commission reasonably interpreted the undefined terms of Section 6409(a) of the Spectrum Act; and

(2) Whether Section 6409(a) and the Commission's implementing rules violate the Tenth Amendment.

COUNTERSTATEMENT OF THE CASE

Section 6409(a) of the Spectrum Act precludes State and local governments from denying requests for insubstantial modifications to existing wireless facilities – the modifications least likely to pose environmental, historic preservation, public safety, or aesthetic concerns.

To facilitate implementation of Section 6409(a), the *Order* clarified several of the statute's undefined terms – including "substantially change the physical dimensions", "wireless tower", and "base station" – consistent with longstanding Commission rules. To protect local land use policies, the *Order* interpreted the term "existing" in Section 6409(a) to limit the statute's reach to facilities that had previously been reviewed and approved by a State or local government, and it preserved those entities' authority to condition approval of a proposed modification on, *inter alia*, compliance with building, electrical, and other safety codes and concealment measures designed to mitigate the visual impact of the facility. But because Section 6409(a) was designed to eliminate lengthy zoning processes, the *Order* set a 60-day

deadline for State and local review of a covered request, limited review to determining whether the request is covered by Section 6409(a), and provided that where a State or local government fails to act, the request will be deemed granted under federal law. The rules thus appropriately balance Congress's interest in promoting wireless broadband services with States' and localities' interest in minimizing any impact on local land use.

COUNTERSTATEMENT OF THE FACTS

I. STATUTORY BACKGROUND

An effective national wireless telecommunications network depends on wireless towers and other antenna support structures. Local residents, however, sometimes resist the erection of such facilities in their communities. As a result, "zoning approval for new wireless facilities is both a major cost component and major delay factor in deploying wireless systems." *Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service*, 12 FCC Rcd 10785, 10833 (¶ 90) (1997).

Congress enacted the Telecommunications Act of 1996 ("1996 Act"), Pub. L. No. 104-104, 110 Stat. 56, to "encourage the rapid deployment of new telecommunications technologies" and "secure lower prices and higher quality services for American telecommunications consumers." *Id.* at 56. "One of the means by which it sought to accomplish these goals was

reduction of the impediments by local governments upon the installation of facilities for wireless communications, such as antenna towers." *City of Rancho Palos Verdes, Cal. v. Abrams*, 544 U.S. 113, 115 (2005).

Installation of wireless communications facilities after the 1996 Act progressed more slowly than expected – in part due to lengthy State and local zoning review. To reduce these delays, Congress in 2012 enacted Title VI of the Middle Class Tax Relief and Job Creation Act of 2012 ("Spectrum Act"), Pub. L. No. 112-96, 126 Stat. 156. Among other things, the Spectrum Act requires the Commission to auction additional spectrum for commercial use. *See* 47 U.S.C. §§ 1451, 1452. It also established the First Responder Network Authority ("FirstNet") to oversee construction and operation of a nationwide public safety wireless broadband network. Congress directed FirstNet to "leverage to the maximum extent economically desirable, existing commercial wireless infrastructure to speed deployment of the network," *id.* § 1426(b)(1)(C), and it authorized the Commission to "take any action necessary to assist [FirstNet] in effectuating its duties and responsibilities." *Id.* § 1433.

In furtherance of the Spectrum Act's twin goals of commercial and public safety wireless broadband deployment, Section 6409(a), entitled "Facility Modification," provides in part:

> Notwithstanding section 704 of the [1996 Act] or any other provision of law, a State or local government may not deny, and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station.

47 U.S.C. § 1455(a)(1). The statute defines "eligible facilities request" as "any request for modification of an existing wireless tower or base station that involves–(A) collocation of new transmission equipment; (B) removal of transmission equipment; or (C) replacement of transmission equipment." *Id.* § 1455(a)(2). The statute further provides that "[n]othing in paragraph (1) shall be construed to relieve the Commission from the requirements of the National Historic Preservation Act or the National Environmental Policy Act of 1969." *Id.* § 1455(a)(3). Section 6409(a) does not define any of its key terms, other than "eligible facilities request." Nor are those terms included in the definitional sections of the Spectrum Act or the Communications Act of 1934, 47 U.S.C. § 201 *et seq.* *See* 47 U.S.C. § 1401; 47 U.S.C. § 153.

Section 6003(a) of the Spectrum Act instructs the Commission to "implement and enforce [Title VI] as if [it] is part of the Communications Act of 1934." 47 U.S.C. § 1403(a). The agency therefore has broad rulemaking authority to implement Section 6409(a). *See, e.g.*, 47 U.S.C. §§ 154(i), 201(b), 303(r).

II. SMALL CELLS AND DISTRIBUTED ANTENNA SYSTEMS

Two new wireless technologies that use small facilities are small cells and distributed antenna systems ("DAS").[2] *Order* ¶¶ 23-25 (JA___-___). Small cells "function like cells in a mobile network" and "cover[] targeted indoor or localized outdoor areas" ranging in size from a home or office to a stadium. *Id.* ¶ 30 (JA___). Wireless providers often use small cells to fill coverage gaps left by macrocells mounted on traditional (much larger) antenna structures, as well as to increase capacity in areas with heavy usage. *Id.*

Like small cells, DAS is used to provide service in areas "with poor coverage or inadequate capacity." *Id.* ¶ 31 (JA___). DAS typically consists of: (1) "nodes" deployed throughout the coverage area, each of which includes one antenna; (2) fiber-optic cable that connects each node to a central communications hub; and (3) radio transceivers at the hub, which control the communications signals transmitted and received through each antenna. *Id.*

[2] The attached Technical Appendix includes a fact sheet distributed by the Commission to Tribal Nations describing typical small cell and DAS deployments.

Because small cell and DAS facilities are "much smaller than macrocell antennas" and "do not require the same elevation," they "can be placed on light stanchions, utility poles, building walls and rooftops." *Id.* ¶ 32 (JA___). This enables the deployment of wireless infrastructure "where traditional towers are not feasible," *id.*, and makes it easier to apply "stealth measures" that allow wireless facilities to "blend with the structures on which they are installed." *Id.* ¶ 33 (JA___). Thus, wireless service providers "are rapidly increasing their use of these technologies." *Id.* ¶ 34 (JA___).

III. THE *ORDER* ON REVIEW

The Commission, in the *Order*, sought to "reduce" "regulatory obstacles and bring efficiency to wireless facility siting and construction." *Order* ¶ 9 (JA___). "Despite the widely acknowledged need for wireless infrastructure," the Commission found that "the process of deploying these facilities can be expensive, cumbersome, and time-consuming" because wireless providers "must typically obtain siting approval from the local municipality" as well as complete environmental and historic preservation review under the Commission's rules. *Id.* While these requirements "serve important local and national interests," they "can slow deployment

substantially, even in cases that do not present significant concerns."[3] *Id.* ¶ 10 (JA___).

The *Order* thus "create[d] strong incentives for wireless providers to collocate on structures that already support wireless deployments." *Id.* ¶ 5 (JA___). Collocation, the Commission explained, "reduces costs" and thus "promotes access to [wireless] infrastructure." *Id.* Sharing facilities, rather than building new facilities, also "safeguards environmental, aesthetic, historic, and local land-use values." *Id.* By amending its rules to facilitate collocation, the Commission in the *Order* attempted to promote wireless deployment in a manner that will "almost always result in less impact or no impact" on the "aesthetic and safety interests" of State and local governments. *Id.* ¶ 3 (JA___).

A. New NEPA and NHPA Exclusions for Small Wireless Facilities

As part of its regulation of licensed wireless communications services, the Commission must ensure that installation of the facilities needed to

[3] *See, e.g.*, Verizon Comments at 31 (JA___) (a proposal to add three like-sized camouflaged antennas on an existing tree pole in Livermore, California, resulted in discretionary review that took 168 days to approve); T-Mobile Reply Comments at Attachment A (JA___) (various instances where localities have either denied or failed to act on facility modification requests); AT&T Comments at 17 (JA___) (same).

support those services complies with federal environmental protection and historic preservation statutes.

1. The National Environmental Policy Act of 1969 ("NEPA"), 42 U.S.C. §§ 4321 *et seq.*, requires federal agencies to identify and evaluate the environmental effects of proposed federal actions and to prepare a "detailed statement" for "major Federal Actions significantly affecting the quality of the human environment." *Id.* § 4332(2)(C); 47 C.F.R. § 1.1305. The Commission's grant of approval of an application that will result in the deployment of a wireless communications facility qualifies as a federal action subject to NEPA procedures. *Order* ¶ 37 (JA___).

Federal regulations implementing NEPA allow agencies to adopt "categorical exclusions" for actions that "do not individually or cumulatively have a significant effect on the human environment." *See* 40 C.F.R. § 1508.4. Relying on that authority, the Commission, prior to the *Order*, categorically excluded from environmental review "the mounting of antenna(s) on an *existing* antenna or antenna tower" (also known as "collocation") unless the antenna's operation would result in human exposure to radio frequency emissions in excess of Commission-determined health and safety guidelines. 47 C.F.R. § 1.1307(b).

To facilitate the deployment of small wireless technologies, the *Order* expanded the existing NEPA exclusion for collocations on buildings and towers to include other structures (*e.g.*, utility poles). *Order* ¶¶ 52-56 (JA___-___). It also excluded from environmental review all wireless facilities deployed in utility or communications rights-of-way, including new poles constructed to support small cell and DAS facilities, provided they meet certain conditions. *Id.* ¶¶ 60-69 (JA___-___).

2. Section 106 of the National Historic Preservation Act of 1966 ("NHPA"), 54 U.S.C. § 306108, requires federal agencies to consider the effects of their "undertaking[s]" on historic properties included or eligible for inclusion in the National Register of Historic Places. An agency can fulfill its Section 106 responsibilities through compliance with a "programmatic agreement" negotiated with the Advisory Council on Historic Preservation, which administers the NHPA, and other stakeholders, including State or Tribal historic preservation officers. 36 C.F.R. § 800.14(b)(2)(iii).

The Commission entered into such an agreement with the Advisory Council in 2001 (the "Collocation Agreement"). *See* 47 C.F.R. Part 1, App. B. Finding that "the effects on historic properties of collocations of antennas on towers, buildings, and structures are likely to be minimal and not adverse," the Collocation Agreement generally excludes antennas deployed on existing

towers from routine historic preservation review except where, *inter alia*, the new antenna "will result in a substantial increase in the size of the tower." *See id*. §§ III.A, IV.A. The Collocation Agreement also excludes most antennas collocated on buildings and other non-tower structures, provided that the structure is not a historic landmark, is not located within or visible from an historic district, and is not more than 45 years old. *See id.* § V.

The *Order* expanded the Collocation Agreement framework to accommodate small cell and DAS deployment. First, the *Order* excluded from NHPA review collocations of wireless facilities on existing utility structures, including utility poles and electric transmission towers, when the collocated equipment, in combination with any wireless equipment already deployed on the structure, meets specified size limitations. *See id.* ¶¶ 88, 90-95 (JA___, ___-___). Second, the *Order* excluded collocations on buildings and other non-tower structures that already house one or more antennas if they meet specified size limitations. Both of these new exclusions apply only where historic preservation review was triggered by the age of the structure alone and the collocations will involve no new ground disturbance. *Id.* ¶¶ 88, 96-103 (JA___, ___-___).

B. Implementation of Section 6409(a)

The *Order* also "clarif[ied] the requirements of Section 6409(a)" to "ensure that … numerous and significant disagreements over the provision do not delay its intended benefits." *Order* ¶ 142 (JA___); *see id* ¶ 138 (JA___).[4]

1. Interpretation of Undefined Terms

The *Order* found "[a]mbiguities in many of the terms in" Section 6409(a), *id.* ¶ 135 (JA___), and provided the Commission's interpretations of "a number of [those] undefined terms" "that bear directly on how the provision applies to infrastructure deployments." *Id.* ¶ 145 (JA___).

Existing Wireless Tower or Base Station. Consistent with the Collocation Agreement, the *Order* "define[d] 'tower' to include any structure built for the sole or primary purpose of supporting any Commission-licensed or authorized antennas and their associated facilities." *Id.* ¶ 166 (JA___).

The *Order* then defined "base station" as "the equipment and non-tower supporting structure at a fixed location that enable Commission-licensed or authorized wireless communications between user equipment and

[4] After enactment of the Spectrum Act, the Commission's Wireless Telecommunications Bureau issued a Public Notice providing "interpretative guidance" concerning some, but not all, of the issues raised by Section 6409(a). *See* Public Notice, *Wireless Telecommunications Bureau Offers Guidance on Interpretation of Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012*, 28 FCC Rcd 1 (WTB 2013). The Commission subsequently initiated a rulemaking proceeding to address these and other issues. *Order* ¶ 138 (JA___).

a communications network." *Id.* ¶ 167 (JA___). This includes "any equipment associated with wireless communications service," such as radio transceivers, antennas, cables, and regular and back-up power supply. *Id.* It also encompasses the structure that supports that equipment. *Id.* ¶ 169 (JA___). The *Order* explained that Section 6409(a) "plainly contemplates collocations on a base station," and "collocating on base stations … would be conceptually impossible unless the structure is part of the definition." *Id.*

The *Order* also rejected an industry proposal to define an "existing" wireless tower or base station as "any structure that is merely capable of supporting wireless transmission equipment," irrespective of whether it currently supports such equipment. *Id.* ¶ 168 (JA___). Thus, a zoning authority "is not obligated to grant a collocation application under Section 6409(a)" unless the wireless tower or base station has previously been "reviewed and approved under the applicable local zoning or siting process" or received "another form of affirmative State or local regulatory approval." *Id.* ¶ 174 (JA___). By "preserving State and local authority to review the first base station deployment that brings any non-tower structure within the scope of Section 6409(a)," the *Order* sought to "ensure that subsequent collocations … will not pose a threat of harm to local land use values." *Id.*

Substantially Changes Physical Dimensions. The *Order* adopted an objective standard, largely based on the "substantial increase in size" test in the Collocation Agreement, for determining whether a proposed modification will "substantially change the physical dimensions" of "an existing tower or base station." *Id.* ¶¶ 188-95 (JA___-___).

In particular, a modification "substantially change[s] the physical dimensions" of a tower or base station if it meets any of the following criteria:

> for towers outside the public rights-of-way, it increases the height by more than 20 feet or 10%, whichever is greater; for those towers in the rights-of-way and for all base stations, it increases the height of the tower or base station by more than 10% or 10 feet, whichever is greater;
>
> for towers outside the public rights-of-way, it protrudes from the edge of the tower more than 20 feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater; for towers in the rights-of-way and for all base stations, it protrudes from the edge of the structure more than six feet;
>
> it involves installation of more than the standard number of new equipment cabinets for the technology involved, not to exceed four cabinets;
>
> it entails any excavation or deployment outside the current site of the tower or base station.

Id. ¶¶ 21, 191-99 (JA__,___-___).

The *Order* specifies that changes are measured from the dimensions of the tower or base station as originally approved, or as most recently modified

with zoning approval prior to enactment of the Spectrum Act – not, as industry requested, "from the last approved change," which the Commission predicted would create a daisy-chain that "provide[s] no cumulative limit at all." *Id.* ¶¶ 196-97 (JA___-___).

The *Order* further held that a modification "substantial[ly] change[s the] physical dimensions" of a tower or base station if it would defeat existing concealment measures, "such as painting to match the supporting façade or artificial tree branches." *Id.* ¶ 200 (JA___). A modification also would be substantial if it would not comply with a condition contained in the State or locality's prior approval of the tower or base station, unless the non-compliance was due to an increase in size that is within the Commission's substantial change thresholds described above. *Id.*

Finally, the *Order* clarified that facility modifications covered by Section 6409(a) must still comply with federal law, including any applicable Commission, Federal Aviation Administration, NEPA, or NHPA requirements. *Id.* ¶ 203 (JA___). Likewise, States and localities may require such modifications to comply with "generally applicable building, structural, electrical, and safety codes." *Id.* ¶ 202 (JA___).

2. Review Process and Remedies

To facilitate implementation of Section 6409(a), the *Order* adopted rules limiting State and local government review of proposed modifications to existing wireless facilities covered by the statute. *Order* ¶¶ 205-21 (JA___-___). A State or locality reviewing an application under Section 6409(a) generally must process the application within 60 days. *Id.* ¶¶ 215-20 (JA___-___). Absent "such limitation," a State or local government "could evade its statutory obligation to approve covered applications by simply failing to act on them, or it could impose lengthy and onerous processes not justified by the limited scope of review contemplated by the provision." *Id.* ¶ 212 (JA___).

If a State or locality fails to issue a decision in 60 days, the application is "deemed granted" under federal law. *Id.* ¶¶ 226-36 (JA___-___). Section 6409(a)'s statement that a State or local government "may not deny, and shall approve" any qualifying application to modify facilities, the Commission explained, "leaves no room for a lengthy and discretionary approach to reviewing an application that meets the statutory criteria; once the application meets these criteria, the law forbids the State or local government from denying it." *Id.* ¶ 227 (JA___).

An application "deemed grant[ed]" becomes effective when the applicant notifies the reviewing jurisdiction in writing that the application has been deemed granted under federal law. *Id.* ¶ 226 (JA___). A State or locality may seek judicial review of an applicant's assertion that the application is deemed granted "when [the State or locality] believes the underlying application did not meet the criteria in Section 6409(a)…, would not comply with applicable building codes or other non-discretionary structural and safety codes, or for other reasons is not appropriately 'deemed granted.'" *Id.* ¶ 231; *see id.* ¶¶ 234-36 (JA___). The applicant also may seek "some form of judicial imprimatur for the grant by filing a request for declaratory judgment or other relief" in a court of competent jurisdiction. *Id.*

Finally, the *Order* rejected the argument that Section 6409(a) and the Commission's implementing rules violate the Tenth Amendment. *See id.* ¶¶ 209, 213 n.593 (JA___,____). As the Commission explained, Section 6409(a) "do[es] not require State or local authorities to review wireless facilities siting applications, but rather preempt[s] them from choosing to exercise such authority under their laws other than in accordance with Federal law – *i.e.*, to deny any covered requests." *Id.* ¶ 213 n.593 (JA___).

SUMMARY OF ARGUMENT

Congress enacted Section 6409(a) of the Spectrum Act to preempt local zoning review of facility modifications that do not "substantially change the physical dimensions" of "an existing wireless tower or base station." As the agency entrusted with administering Section 6409(a), the Commission interpreted its ambiguous language in a way that promotes clarity and predictability, and is fully consistent with Congress's intent to expedite the deployment of wireless communications infrastructure.

1. The Commission in the *Order* reasonably interpreted the undefined terms in Section 6409(a).

a. The Commission adopted an objective test to determine the substantiality of a proposed facility modification. It found that an objective test would speed zoning review by giving wireless providers and localities greater certainty over the types of modifications covered by Section 6409(a). This approach is sensible. It is consistent with the Commission's use of objective criteria to define substantiality in various related and unrelated contexts. And it furthers Congress's intent to reduce the zoning delays that occurred when States and localities had virtually unlimited discretion to review even insubstantial facility modification requests.

The Commission's criteria for determining substantiality also are reasonable. Those criteria are adapted from the Collocation Agreement. That Agreement for more than a decade has used an objective "substantial increase in size" test in connection with historic preservation review. The *Order*, however, imposes even more restrictive limits on height and width increases to non-tower structures (*e.g.*, buildings and utility poles), and all structures located in public rights-of-way.

Moreover, Section 6409(a)(3) expressly preserves environmental and historic preservation review, and the *Order* permits States and localities to condition a facility modification request on compliance with concealment measures and generally applicable building and safety codes. Finally, nothing in the *Order* prevents a State or locality from seeking a waiver of the Section 6409(a) rules where application of those rules would contradict their intended purpose. Given these myriad safeguards, petitioners cannot persuasively assert that application of those rules would result in mandatory approval of truly substantial facility modifications.

b. The Commission reasonably interpreted the term "base station" in Section 6409(a) to include not only base station equipment (*e.g.*, radios and antennas) but also the structure that supports the equipment. Petitioners claim that Congress understood "base station" to be a term of art that only

includes transmission equipment. But if it were a term of art with this specific meaning, it would appear as such somewhere in the federal code or the Commission's rules. It does not. The Commission's rules do not expressly exclude support structures from the various definitions of "base station," and instead provide for collocation on the same types of structures covered by the *Order*. Regardless, petitioners' reading of the statute is unreasonable because it would foreclose collocation on base stations, which Section 6409(a) clearly envisions.

Further, the Commission's interpretation of "base station" is neither overly broad nor impermissibly vague. The rules adopted in the *Order* only permit installation of additional base station equipment on a support structure, subject to certain size limits – not an increase in the size of the structure itself. Moreover, the statute only covers base stations that have previously been reviewed and approved for such purpose by a State or local government. Thus, a State or locality will always know where a base station "begins" and "ends" because of its prior approval of the installation of that base station.

2. Finally, Section 6409(a) and the Commission's implementing rules do not violate the Tenth Amendment. Nothing in the statute or the *Order* requires State or local officials to administer a federal program – or for that matter, to do anything at all. States and localities have a choice: They can

approve a facility modification request covered by Section 6409(a), or they can allow federal rules to fill the void. Section 6409(a), as implemented by the Commission, fits comfortably within Congress's power to "pre-empt or displace state regulation of private activities affecting interstate commerce," *Hodel v. Va. Surface Mining & Reclamation Ass'n*, 452 U.S. 264, 290 (1981), and "ma[ke] compliance with federal standards a precondition to continued state regulation in an otherwise pre-empted field." *Printz v. United States*, 521 U.S. 898, 926 (1997) (citing *id.* at 288).

STANDARD OF REVIEW

Review of petitioners' challenge to the Commission's interpretation of the Spectrum Act is governed by *Chevron USA v. Natural Resources Defense Council*, 467 U.S. 837 (1984).[5] Under *Chevron*, if "Congress has directly spoken to the precise question at issue," the Court must give effect to Congress's unambiguously expressed intent. *Id.* at 842-43. But if, as in this case, "the statute 'is silent or ambiguous,' [courts] must defer to a reasonable construction by the agency charged with its implementation." *Barnhart v. Thomas*, 540 U.S. 20, 26 (2003) (quoting *Chevron*, 467 U.S. at 843).

[5] Although petitioners' lead argument is that the FCC's rules "Fail to Properly Interpret the Terms of the Statute," Pet. Br. 27, petitioners' brief does not even mention *Chevron*, the seminal case governing judicial review of an agency's interpretation of its organic statute.

When the implementing agency's reading of an ambiguous statute is reasonable, *Chevron* requires the Court "to accept the agency's construction of the statute, even if the agency's reading differs from what the [C]ourt believes is the best statutory interpretation." *Nat'l Cable & Telecomm. Ass'n v. Brand X Internet Servs.*, 545 U.S. 967, 980 (2005); *see also West Virginia CWP Fund v. Bender*, 782 F.3d 129, 140 (4th Cir. 2015).

Petitioners also challenge the reasonableness of the *Order*. Under the Administrative Procedure Act ("APA"), the Court "may set aside" agency action "only if it is 'arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.'" *Am. Whitewater v. Tidwell*, 770 F.3d 1108, 1115 (4th Cir. 2015) (quoting 5 U.S.C. § 706(2)(A)). "Review under this standard is highly deferential, with a presumption in favor of finding the agency action valid." *Ohio Valley Envtl. Coal. v. Aracoma Coal Co.*, 556 F.3d 177, 192 (4th Cir. 2009). Accordingly, "'[i]f the agency has followed the proper procedures, and if there is a rational basis for its decision," this Court "'will not disturb its judgment.'" *Webster v. U.S. Dept. of Agriculture*, 685 F.3d 411, 422 (4th Cir. 2012) (quoting *Hodges v. Abraham*, 300 F.3d 432, 445 (4th Cir. 2002)).

ARGUMENT

I. THE COMMISSION REASONABLY INTERPRETED SECTION 6409 OF THE SPECTRUM ACT

Congress did not define key terms in Section 6409(a), leaving gaps for the Commission to fill. Hence, petitioners may prevail only if they demonstrate that the FCC's interpretations of ambiguous terms in the Spectrum Act are unreasonable. This they have failed to do. The Court under *Chevron* Step II should defer to the agency's reasonable interpretations of the undefined terms in the statute. *See Chevron*, 467 U.S. at 843. It also under the APA should defer to the Commission's reasonable implementation of Section 6409(a).

A. The Commission's Interpretation of "Substantially Change the Physical Dimensions" Is Reasonable and Consistent with the APA

While Section 6409(a) expressly preempts some State and local zoning review, it uses ambiguous language to describe the contours of that preemption. Thus, it provides that "a State or local government may not deny, and shall approve" facility modifications that do not "substantially change the physical dimensions" "of an existing wireless tower or base station," but it does not define the critical term "substantially change the physical dimensions." Given the ambiguity in the term "substantial", *see Pierce v. Underwood*, 487 U.S. 552, 564 (1988), this Court should defer to

the Commission's reasonable interpretation of the phrase "substantially change the physical dimensions" in Section 6409(a). *See Nat'l Elec. Mfrs. Ass'n v. U.S. Dep't of Energy*, 654 F.3d 496, 504 (4th Cir. 2011) (If "the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute.") (internal citation omitted).

1. The Commission Reasonably Adopted an Objective Standard to Measure the Substantiality of a Proposed Facility Modification

The Commission rested its decision on the clear purpose of the statute: To eliminate delays in wireless broadband deployment by excluding from lengthy zoning review those facility modifications that do not "substantially change[] the physical dimensions of an existing tower or base station." *See Order* ¶ 188 (JA___). In furtherance of that Congressional intent, the Commission reasonably concluded that use of an objective test to measure substantiality would expedite review of such requests by providing wireless providers and zoning authorities greater certainty over the types of facility modifications covered by Section 6409(a). *Id.* ¶¶ 188-203 (JA___-___).

Petitioners and their amici argue that the Commission erred because substantiality only can be "measured in context." Pet. Br. 31; *see* Am. Br. 14-20. According to petitioners, the Commission was required to adopt a

subjective standard that provides States and localities virtually unlimited discretion to determine whether a proposed facility modification constitutes a "substantial change" in "physical dimensions." *Id*. at 31-34; *see Order* ¶ 186 (JA___).

Although that might be petitioners' preferred view, Congress did not share it. There would have been no need to enact Section 6409(a) if Congress were satisfied with the "open-ended and context-specific" approach employed by many State and local governments prior to enactment of the Spectrum Act. *Order* ¶ 189 (JA___); *cf. City of Arlington v. FCC*, 668 F.3d 229, 258 (5th Cir. 2012) (rejecting the argument that "what constitutes a 'reasonable period of time'" under 47 U.S.C. § 332(c)(7)(B)(ii) "should be determined by taking into account 'the nature and scope of such request'"), *aff'd*, 133 S. Ct. 1863 (2013); *Alliance for Cmty. Media v. FCC*, 529 F.3d 763, 778 (6th Cir. 2008) (rejecting petitioners' argument that the FCC could not impose hard deadlines on local authorities' review of cable franchise applications).

Indeed, if States and localities retain virtually unlimited discretion to determine which facility modifications are substantial and, thus, subject to further zoning review, they establish the outer boundaries of their own authority. In that event, Section 6409(a) would effectively impose *no* limit on the scope of zoning review, and the statute's command that States and

localities "may not deny, and shall approve" would do no work. That could not have been Congress's intent in a statute that expressly preempts at least some State and local zoning authority. Petitioners' interpretation of Section 6409(a) therefore is not reasonable, much less required, because it would render that provision of the Spectrum Act inoperative. *See Hibbs v. Winn*, 542 U.S. 88, 101 (2004) ("[a] statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant"); *see also Zheng v. Holder*, 562 F.3d 647, 654 (4th Cir. 2009) (deferring to an agency's "reasonable interpretation" of statutes and regulations where the petitioner's proposed alternative would render provisions "superfluous").

Further, the "contextual and entirely subjective standard" demanded by petitioners and their amici is in "conflict with Congress's intent" to promote wireless broadband deployment, both by commercial licensees and public safety entities, including FirstNet. *Order* ¶ 189 (JA___). The Commission considered but rejected that standard, finding it "would invite lengthy review processes." *Id.* For example, "some municipal commenters" informed the Commission that "their review … under a subjective, case-by-case approach could take even longer than their review of collocations absent Section 6409(a)." *Id.* The subjective standard also "would tend to require longer and

more costly litigation" between wireless providers and State and local authorities over zoning disputes. *Id*. Congress enacted Section 6409(a) to eliminate such delay – not to enable it.

Petitioners look for support for their interpretation of Section 6409(a) in copyright law, Pet. Br. 31-32, but that comparison is inapt. In the relevant context of communications law, substantiality often is defined in objective terms. Thus, the Commission has long relied on the Collocation Agreement's objective test for determining a "substantial increase in the size of a tower" to exclude facility modifications from historic preservation review. *Order* ¶ 81; *Collocation Agreement* § I.C., 47 C.F.R. Part 1, App.B. It has applied similar tests to designate collocation applications subject to 90-day local zoning review under 47 U.S.C. § 332(c)(7) and to limit environmental review procedures for certain modifications of registered wireless towers. *See Order*

¶ 190 (JA___).[6] And outside the context of wireless communications infrastructure, Commission rules also employ objective criteria to measure or define substantiality.[7] This longstanding approach is entirely consistent with the Supreme Court's recognition that "substantial" can mean "'[c]onsiderable in amount" or "large" – characteristics that are well-suited to measurement using objective criteria. *Pierce*, 487 U.S. at 564. It follows that the Commission's decision to define a "substantial change in physical dimensions" based on "specific, objective factors" is reasonable, *Order* ¶ 189 (JA____), and the Court, applying the familiar *Chevron* framework, should defer to the Commission's interpretation of Section 6409(a).

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[6] *See Petition for Declaratory Ruling to Clarify Provisions of Section 332(c)(7)(B) to Ensure Timely Siting Review and to Preempt under Section 253 State and Local Ordinances that Classify All Wireless Siting Proposals as Requiring a Variance*, 24 FCC Rcd 13994, 14012 (¶ 46) (2009) (requiring zoning authorities to process a collocation application within 90 days provided that it does not constitute a "substantial increase in the size of a tower" based on the criteria in the Collocation Agreement), *aff'd*, *City of Arlington, Tex.*, 133 S. Ct. 1863; 47 C.F.R. § 17.4(c)(1)(ii) (using a modified version of the Collocation Agreement test to determine whether modification of an existing registered tower requires public notice for purposes of environmental review).

[7] *See, e.g.*, 47 C.F.R. § 12.4(d)(1) (using objective criteria to determine whether a 911 provider has made substantial progress in meeting E911 reliability standards); 47 C.F.R. § 76.56(b)(5) (using objective criteria to determine whether a local commercial television station "substantially duplicates the signal of another local commercial television station").

2. The Commission's Criteria for Determining Substantiality Are Reasonable

Petitioners also object to the line drawn "between installations that might require" local zoning review "and those that do not." Pet. Br. 36; *id*. at 36-40, 41-45. As this Court has observed, however, it "must be hesitant in second-guessing an agency's judgment concerning the selection" of such boundaries. *Jones v. C.I.R.*, 642 F.3d 459, 465 (4th Cir. 2011). "'Where the agency's line drawing does not appear irrational, and the [challenger] has not shown that the consequences of the line-drawing are in any respect dire'" the Court "'will leave that line-drawing to the agency's discretion.'" *Blaustein & Reich, Inc. v. Buckles*, 365 F.3d 281, 291 (4th Cir. 2004) (quoting *Leather Indus. of Am., Inc., v. Envtl. Prot. Agency*, 40 F.3d 392, 409 (D.C. Cir. 1994)). This case easily satisfies that standard and, more broadly, the requirements of the APA.

The Commission found that the Collocation Agreement's test for "substantial increase in size" "should inform" its interpretation of "substantially change[s] … physical dimensions" in Section 6409(a). For more than a decade, that test has relied on objective criteria to exclude facility modifications from routine historic preservation review, with no ill effects. *See Order* ¶ 190 (JA___); *Collocation Agreement* § 1.C., 47 C.F.R. Part 1, App.B. Consistent with that successful approach, the *Order* reasonably

adopted a modified version of the Collocation Agreement test to determine whether a "change in physical dimensions" is "substantial" for purposes of Section 6409(a). *Order* ¶¶ 190, 193-95 (JA ___, ___-___).

1. Petitioners claim that the *Order* failed to "explain[] or justif[y]" the criteria used to determine whether a modification to a non-tower structure "substantially changes" its "physical dimensions." Pet. Br. 38. Petitioners' complaint is not with the lines drawn in the *Order*, but with the Commission's decision to draw lines. *See* Pet. Br. 31-34; *see also* Am. Br. 14-20. That argument fails, for the reasons set forth above. *See* pp. 25-29.

In any event, the *Order* discussed those criteria at length.[8] Because the Collocation Agreement's "tests" for determining when a facility modification is "substantial" "were not designed with non-tower structures in mind," the *Order* imposed more restrictive limits on modifications to a non-tower structure's height and width. *Order* ¶ 193 (JA___).

[8] *AT&T Corp.* v. *Iowa Utilities Board*, 525 U.S. 366, 388-389 (1999), *see* Pet. Br. 34-36, does not help petitioners. In that case, the Supreme Court held that the Commission misinterpreted the term "impair" in 47 U.S.C. § 251(d)(2) because the agency "failed" "to apply *some* limiting standard, rationally related to the goals of the [1996] Act." *Iowa Utilities Board*, 525 U.S. at 388; *see id.* at 389 (explaining that "blanket access to incumbents' networks" was inconsistent with § 251(d)(2)'s purpose). *The Order*, by contrast, did limit the modifications deemed insubstantial under Section 6409(a). *See Order* ¶¶ 192-203 (JA___-____). Petitioners simply disagree with those limits.

Thus, while the Collocation Agreement "permit[s] height and width increases of 20 feet under all circumstances," the *Order* held that the height of a non-tower structure can only increase by the greater of 10% or 10 feet to be deemed insubstantial under Section 6409(a). *Id*. "Permitting increases of up to 10% ha[d] significant support in the record," including support from municipalities. *Id.* & n.527 (JA___). With respect to the 10-foot fixed limit, evidence in the record showed that "vertically collocated antennas often need 10 feet of separation," and that without that minimum limit, the objective test "w[ould] not properly identify insubstantial increases on small buildings and other short structures." *Id.* ¶ 193 (JA___). The *Order* also noted that the 10-foot fixed limit "is substantially less" than fixed limits imposed by State collocation statutes.[9] *Id*. & n.529.

The *Order* further held that a proposed modification to a non-tower structure constitutes a substantial change under Section 6409(a) if it would

[9] Petitioners argue that those statutes carry little weight because some were enacted after the January 2013 Public Notice, 28 FCC Rcd 1, which incorporated many of the criteria from the Collocation Agreement. *See* Pet. Br. 40-41. There is no evidence that State legislatures considered that staff-level "interpretive guidance" to be binding, however, so their decision to follow it underscores the reasonableness of the *Order*. Petitioners' argument also ignores the fact that the majority of State collocation statutes enacted after Section 6409(a) adopted an objective standard instead of petitioners' preferred subjective approach. *See Order* n.522 (JA___). Regardless, the record was sufficient to justify the lines drawn in the *Order*, even without reference to those State statutes.

protrude from the edge of the structure by more than six feet. *Id.* ¶ 194 (JA___). The *Order* adopted the six-foot maximum limit because "it is consistent with small facility deployments that municipalities have approved on such structures," and is "significantly less than the limits in width established by most State collocation statutes." *Id.*

The *Order* also takes into account the nature and location of a structure. It found that "utility structures are typically much smaller than traditional towers," and "are often located in easements adjacent to vehicular and pedestrian rights-of-way where extensions are more likely to raise aesthetic, safety, and other issues." *Id.* ¶ 195 (JA___). Thus, the *Order* applied the more restrictive height and width limits applicable to collocations on non-tower structures to (1) utility structures and (2) towers deployed in public rights-of-way, which raise similar aesthetic and safety concerns. *Id.* Petitioners and their supporting amici therefore have no basis to complain that the *Order* failed to consider context. *See* Pet. Br. 38; Am. Br. 18.

Nor can petitioners and their supporting amici demonstrate that the lines drawn in the *Order* are unreasonable by comparing a variety of extreme and purely hypothetical facility modifications. *See, e.g.*, Pet. Br. 38; Am. Br.

18.[10] Such "theoretical possibilities … offer no evidence at all" that the criteria adopted in the *Order* will result in truly substantial modifications to existing wireless towers and base stations. *Allied Local and Regional Mfrs. Caucus v. EPA*, 215 F.3d 61, 74 (D.C. Cir. 2000). "In the absence of contrary evidence," the Court should "defer" to the Commission's "prediction" that they will not. *Id.*

2. Petitioners complain that the Commission erred in relying on the Collocation Agreement's "substantial increase in size" test because that test fails to consider changes in depth. Pet. Br. 33, 39-40. They rely on a dictionary definition of "dimension" to assert that the term "physical dimensions" in Section 6409(a) "include[s] at least height, width *and* depth." Br. 33 (emphasis added). Yet petitioners' own dictionary defines "dimension" as "the length, width, height, *or* depth of something: a measurement in *one direction* (such as the distance from the ceiling to the floor in a room)." *Merriam-Webster Unabridged Dictionary Online*, http://unabridged.merriam-webster.com/ (emphasis added). Since

[10] Petitioners' assertion that the *Order* "authorizes an increase that would multiply the volume of some small cells almost 3000 times," Pet. Br. 33, misses the mark. Section 6409(a) (and the Commission's rules) considers the substantiality of a change to a "wireless tower or base station," not whether new equipment to be collocated on the structure is substantially different from or larger than the equipment already installed on that structure.

"dimension" can be measured by height *or* width, it was hardly unreasonable for the Commission to define the "physical dimensions" based on height *and* width, but not also depth. *See Order* ¶¶ 192-95 (JA___-___). Regardless, "physical dimensions" is ambiguous, so under standard *Chevron* review, the Commission's reasonable interpretation of that statutory term is entitled to deference. *See West Virginia CWP Fund*, 782 F.3d at 140.

Moreover, the rules implementing Section 6409(a) do consider depth. Under Rule 1.40001(b)(7)(iii), installation of new equipment cabinets where none exist, or installation of equipment cabinets that are more than 10 percent larger in height or overall volume than existing ground equipment, constitutes a substantial change under Section 6409(a). *See* 47 C.F.R. § 1.40001(b)(7)(iii). Those limits, which were adopted in response to local government concerns,[11] apply to ground equipment associated with all non-tower structures as well as towers in the public rights-of-way (*i.e.*, the structures most likely to cause local zoning concerns).[12] *Id.*

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[11] *See, e.g.*, Comments of the City of Tempe at 17-19 (JA___); Comments of the City of Miami Beach at 2 (JA___).

[12] Petitioners thus mischaracterize the Commission's rules when they assert that "equipment cabinets allowed in sites outside the right of way" are not defined by "their width, height, or depth, collectively or individually." Pet. Br. 33-34.

Significantly, no one asked the Commission to modify the Collocation Agreement criteria to consider the depth of facility modifications to structures. Instead, municipalities (including petitioners) asked the Commission to define "physical dimensions" to include a long list of features including, *inter alia*, depth, and to allow local zoning authorities to exercise their subjective judgment in determining whether any of those features had "substantially changed." *Order* ¶ 186 (JA___). Thus, the Commission had no basis to include depth in its objective test for determining the substantiality of a proposed change to a wireless tower or base station.[13] In any event, evidence in the record showed that most modifications to base station structures are so limited in depth as to be *de minimis*. *See id.* n.531 (JA___) (describing small-cell and DAS facilities used on poles as 2.08 inches to 20 inches deep).

Petitioners make much of the fact that the Commission's new historic preservation rules, in one narrow circumstance, restrict the extent to which an

[13] Indeed, it is not clear from petitioners' brief how they would have the Commission consider depth under Section 6409(a), or how our Section 6409(a) rules fail to do so.

excluded collocation may add depth to a support structure.[14] *See* Pet. Br. 37, 44. That limitation is easily distinguished on two grounds. First, the Advisory Council's rules implementing the NHPA permit the Commission to exclude an undertaking from NHPA review only if it can ensure "no potential for effects on historic properties." *Order* ¶ 100 (JA___); *see id*. ¶¶ 71, 92 (JA___, ___); 36 C.F.R. § 800.3(a)(1). Section 6409(a), however, only requires the Commission to consider whether a proposed facility modification "substantially change[s] the physical dimensions" of an "existing tower or base station." *See* 47 U.S.C. § 1455(a)(1). Because the NHPA regulations impose a more exacting standard than Section 6409(a) (*i.e.*, "no effect" versus no "substantial[] … change[]"), the Commission reasonably employed "a more stringent test" that considers depth in the context of historic preservation review but not elsewhere. *Order* ¶ 92 (JA____). Second, the volumetric limitation adopted for purposes of historic preservation review was based on a specific proposal in the record. *Id*.

[14] In response to a proposal submitted by PCIA, the *Order* ruled that "antenna enclosures" associated with utility structures may be "no more than three cubic feet in volume per enclosure … up to an aggregate maximum of six cubic feet" and that "all equipment … associated with the collocation on any single structure … must be limited cumulatively to seventeen feet in volume." *Order* ¶ 92 (JA___).

3. The Commission's Treatment of Non-Conforming Uses Is Reasonable

The Commission held that "a wireless tower that does not have a permit because it was not in a zoned area when it was built, but was lawfully constructed, is an 'existing' tower." *Order* ¶ 174 (JA__). Such "legal, non-conforming structures" are thus "available for modification under Section 6409(a), so long as the modification itself does not 'substantially change' the physical dimensions of the supporting structure as defined" in the *Order*. *Order* ¶ 201 (JA___).

According to petitioners, "[m]odifications to non-conforming use sites are by definition substantial." Pet. Br. 52-53. That is merely a restatement of their argument that the Commission's Section 6409(a) rules should not preempt local land use policies. *See id.* at 28-30.[15] Petitioners' argument fails because Section 6409(a) "already acts to preempt … state laws" that would deny a facility modification request covered by Section 6409(a), and the *Order* "only further refines the extent of [that] preemption" by defining

[15] Petitioners seem to rely on the presumption against preemption to argue that the Commission cannot draw lines to advance federal goals. That presumption cannot trump the *Chevron* standard of review in this case. *See Smiley v. Citibank (S.D.), N.A.*, 517 U.S. 735, 743-44 (1996). It also is of little help interpreting an express preemption statute like Section 6409(a). *See id*. at 744; *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 495 (1996).

ambiguous terms in the statute. *City of Arlington v. FCC, Tex.*, 668 F.3d at 253.

Omnipoint Communications MB Operations, LLC v. Town of Lincoln, 107 F.Supp.2d 108 (D. Mass. 2000), *see* Pet. Br. 53, in fact supports the Commission's approach. In *Omnipoint*, the court held that 47 U.S.C. § 332(c)(7), which restricts a state or local government's authority to deny a tower siting application, overrode a local government's refusal to authorize a wireless tower that would expand a pre-existing non-conforming use. Likewise here, Section 6409(a) overrides local restrictions on legal, non-conforming uses that would deny approval of an otherwise insubstantial facility modification. *See Order* ¶ 201 (JA___).

Nor is the "treatment of certain non-conforming facilities" in the *Order* "inconsistent with the [agency's] determination that an existing facility is one whose installation has been affirmatively approved." Pet. Br. 54. The same paragraph that defined an "existing" facility as one that "ha[s] been reviewed and approved" by the local zoning authority created a limited exception for legal, non-conforming structures. *Order* ¶ 174 (JA___). If such structures are categorically excluded from Section 6409(a), "simple changes to local zoning codes could immediately turn existing structures" that had previously been reviewed and approved by a local zoning authority "into legal, non-

conforming uses unavailable for collocation under the statute." *Id.* ¶ 201 (JA___). *Id.* This "compromise[] made" to "balance the competing interests" in preserving local land use policies and promoting wireless infrastructure deployment is entitled to substantial deference. *Nat'l Fed. of the Blind v. FTC*, 420 F.3d 331, 349 (4th Cir. 2005); *see also Am. Whitewater*, 770 F.3d at 1115 (where "the agency is tasked with balancing often-competing interests" this Court's review is "particularly deferential").

4. The *Order* Safeguards Local Land Use Values

The *Order* includes a number of safeguards designed to protect environmental, historic preservation, public safety, and aesthetic interests. *Order* ¶¶ 200, 202-03 (JA___, ___-___). Petitioners assert that those safeguards are inadequate for a variety of reasons, but all of their arguments lack merit.

1. Petitioners contend that the *Order* fails to protect local aesthetic values because it "does not allow a locality to impose concealment requirements if the modification makes a facility which was previously not visible, visible." Pet. Br. 20; *see id.* 44. That argument rests on an overly narrow reading of the *Order*, which provides that "any change that defeats the concealment elements" of a wireless tower or base station "would be considered a 'substantial change' under Section 6409(a)." *Order* ¶ 200

(JA___). Thus, for example, where an existing tower is concealed by a tree line and its location below the tree line was a consideration in its approval, an extension that would raise the height of the tower above the tree line would constitute a substantial change, and a zoning authority could impose conditions designed to conceal the modified facility. *Id.*

Petitioners further complain that the *Order* "preclude[s] enforcement of certain pre-existing conditions directly related to changes in the size of the underlying facility." Pet. Br. 44.[16] While this is the case, such preclusion has a limited impact on aesthetic values given that the *Order* preserves the authority of States and localities to enforce concealment conditions. In effect then, the *Order* only restricts a zoning authority's discretion subjectively to decide "how large is too large" – *i.e.*, the same discretion the Commission found would "conflict with Congress's intent" to promote wireless broadband deployment by commercial providers and FirstNet. *Order* ¶ 189 (JA___); *see* pp. 25-29, above.

[16] Petitioners hypothesize the modification of a "'small cell' … installed on an historic structure" to bolster their argument. Pet. Br. 21. But collocations on historic structures (as well as collocations in or near historic districts) are subject to review under the Commission's historic preservation rules, which require an Environmental Assessment prior to deployment if they may significantly affect a historic property. *See* 47 C.F.R. § 1.1307(a)(4).

2. Petitioners also claim there is "tension" between the Commission's NEPA and NHPA exclusions, which "rel[y] upon the existence of local and state oversight," and its decision to "restrict[] states and localities to enforcing 'generally applicable' and 'non-discretionary' codes" under Section 6409(a). Pet. Br. 43, quoting *Order* ¶ 202 (JA___). There is no tension. In explaining its NEPA exclusion, the Commission recognized that State and local governments may enforce the same non-discretionary structural and safety codes that were explicitly preserved by the Section 6409(a) rules. *Compare Order* ¶ 43 (JA___) (declining to exclude backup generators from the NEPA categorical exclusion for collocations on the ground that "local building and fire codes often regulate the deployment of generators") *with id.* ¶ 202 (JA___) ("clarify[ing] that Section 6409(a) does not preclude States and localities from continuing to require compliance with generally applicable health and safety requirements on the placement and operation of back-up power sources"). The Commission has never relied on "local and state requirements" to protect environmental and historic preservation interests. Pet. Br. 43.

3. Finally, petitioners complain that the *Order* does not include an "extraordinary circumstances" exception, like Section 1.1307(c) of the Commission's environmental rules, 47 C.F.R. § 1.1307(c), which provides

that an "interested person" may file a complaint with the Commission "alleg[ing] that a particular action, otherwise categorically excluded" from review, will have a significant environmental impact. Pet. Br. 39. According to petitioners, States and localities therefore lack the "opportunity to show that a proposed modification is in fact 'substantial.'" *Id.*; *id.* at 42. That is not the case. The *Order* leaves States and localities free to request a waiver of the Section 6409(a) rules in appropriate circumstances under the Commission's general waiver process, 47 C.F.R. § 1.925(b)(3)(i), (ii). The availability of a waiver provides them a means to seek extraordinary relief if application of the criteria for determining the substantiality of a proposed facility modification would prove patently unreasonable in any particular circumstance. Courts have repeatedly held that the Commission may reasonably rely on a waiver process to address "outlier" cases that might arise in specific instances.[17]

[17] *See, e.g.*, *Vermont Pub. Serv. Bd. v. FCC*, 661 F.3d 54, 65 (D.C. Cir. 2011) (finding a waiver process provided a reasonable means to update stale line count data used in a model for determining universal service support); *Alenco Commc'ns, Inc. v. FCC*, 201 F.3d 608, 621 (5th Cir. 2000) (finding a single carrier's reduced rate of return under an operating expenses cap "at most … presents an anomaly that can be addressed by a request for a waiver").

B. The Commission's Interpretation of "Base Station" Is Reasonable and Consistent with the APA

The Commission defined a "base station" as "the equipment and non-tower supporting structure at a fixed location that enable Commission-licensed or authorized wireless communications between user equipment and a communications network." *Order* ¶ 167 (JA___). Petitioners' criticisms of that definition are unsound.

1. The Commission Reasonably Interpreted "Base Station" to Include Support Structures

Petitioners argue that "the term 'base station' does not capture support structures." Pet. Br. 46. Relying on Commission rules and orders, which they say define a "base station" as "antennas and electronic equipment associated with the antenna, but not the structure to which an antenna might be attached," *id.* at 8, petitioners argue that Congress intended "base station" in Section 6409(a) to have the same meaning. *See id.* at 8-9, 51; *see also* Am. Br. 6-7.

That argument fails. None of the rules cited by petitioners and their supporting amici expressly excludes a support structure from the definition of

"base station."[18] Nor can it be inferred from the inclusion of transmission equipment in those rules that support structures are excluded. Such inferences have "reduced force in the context of interpreting agency-administered regulations and will not necessarily prevent the regulation from being considered ambiguous." *Whetsel v. Network Prop. Servs., LLC*, 246 F.3d 897, 902 (7th Cir. 2001); *see also E.E.O.C. v. Seafarers Int'l Union*, 394 F.3d 197, 202 (4th Cir. 2005) (same); *Alliance for Community Media*, 529 F.3d at 779 (rejecting petitioners' argument that the absence of a statutory deadline in 47 U.S.C. § 541(a)(1) prohibited the FCC from adopting one).

Further, the Commission's environmental and historic preservation rules incorporate the 2001 Collocation Agreement, *see* 47 C.F.R. § 1.1307(a)(4) & *id*. Part 1, App.B., which provides for collocation of antennas on buildings and other non-tower structures. Those are the same support structures covered by the *Order*'s "base station" definition. *Compare Collocation Agreement* § V., 47 C.F.R. Part 1, App.B *with Order* ¶¶ 167-68

[18] The closest petitioners come is Rule 95.25(e)(1), 47 C.F.R. § 95.25(e)(1), which defines a "small base station" as "any base station that … [h]as an antenna no more than 6.1 meters (20 feet) above the ground or above the building or tree on which it is mounted." Pet. Br. 8. But "no more than 6.1 meters (20 feet) above the ground or above the building or tree on which it is mounted" modifies "antenna," not "base station," so the rule is irrelevant. *See Amendment of Subparts A and E of Part 95 to Improve the General Mobile Radio Service (GMRS)*, 3 FCC Rcd 6554, 6559 (¶ 47 n.44) (1988).

(JA___-___) & 47 C.F.R. § 1.40001(b)(1)(iii). While the Collocation Agreement does not define "base station," it and Section 6409(a) use nearly identical terms ("substantial increase in … size" versus "substantially changes … physical dimensions"), and both are designed to facilitate collocation. Section 6409(a)(3) also preserves environmental and historic preservation review, which is guided by the Collocation Agreement. Therefore, the Commission reasonably decided that Congress meant Section 6409(a) to encompass modifications to support structures like buildings and utility poles, which were already covered by the Collocation Agreement.

Petitioners' argument fails for another reason: "[T]he full text of [Section 6409(a)] … plainly contemplates collocations on a base station as well as a tower." *Order* ¶ 169 (JA___). Section 6409(a)(2) defines an "eligible facilities request" as "any request for modification of an existing wireless tower or *base station* that involves–(A) *collocation* of new transmission equipment; (B) removal of transmission equipment; or (C) replacement of transmission equipment." 47 U.S.C. § 1455(a)(2) (emphasis added). As the Commission explained, "collocating on base stations … would be conceptually impossible unless the structure is part of the definition." *Order* ¶ 169 (JA___). The *Order* thus reasonably held that Section 6409(a) "precludes [the Commission] from limiting the term 'base

station' to transmission equipment" because it would foreclose collocation on base stations. *Id.* And that reading of Section 6409(a) follows the "cardinal principle of statutory construction that a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant." *Alaska Dep't of Envtl. Conservation v. E.P.A.*, 540 U.S. 461, 489 n.13 (2004) (citation omitted).[19]

Also, as the *Order* explained, structures other than towers "are increasingly important to the deployment of wireless communications infrastructure." *Order* ¶ 170 (JA___). If Congress "omitt[ed]" those structures "from the scope of Section 6409(a)[,] … the statute's efficiencies would not extend to many if not most wireless collocations" – including "virtually all of the small cell collocations that have the least impact on local land use." *Id*. Since Congress intended Section 6409(a) to speed the deployment of wireless infrastructure, it is highly unlikely that it would delay that deployment by defining "base station" so narrowly.

[19] Petitioners assert that the "impossibility claim is nonsense" based on a hypothetical "modification in the size of a base station to allow for new electronic equipment in additional equipment cabinets." Pet. Br. at 51. It strains credulity that Congress would provide for "collocation" on an "existing … base station" solely to permit installation of the equipment associated with an antenna, but not the antenna required to provide wireless communications services.

2. The Commission's Interpretation of "Base Station" Is Neither Overly Broad nor Impermissibly Vague

Petitioners and their supporting amici contend that the Commission's definition of "base station" is overly expansive. They are wrong.

The Commission's definition of "base station" does not render the term "tower" superfluous, as petitioners suggest. Pet. Br. 51 & n.123. Rather, the Commission reasonably interpreted "tower" to cover traditional wireless towers, even if they do not currently support antennas, *Order* ¶ 166 (JA___),[20] and it interpreted "base station" to include only those non-tower structures that already support an antenna and associated equipment, *id.* ¶¶ 166-68 (JA___-___). As such, there is no "redundancy," Pet. Br. 51 n.123, because "tower" and "base station" cover two distinct categories of structures. *See Order* ¶¶ 169, 171 (JA___, ___).

[20] Petitioners briefly argue that "[t]he notion that Congress was actually referring to empty towers is implausible." Pet. Br. 51 n.123. But the Commission's reasonable interpretation of "tower" is consistent with the agency's rules, including the Collocation Agreement, which defines "collocation" as "the mounting or installation of an antenna on an existing tower, building or structure" without regard to whether an antenna has already been deployed on that structure. *Collocation Agreement* § I.A., 47 C.F.R. Part 1, App.B; *see also* 47 C.F.R. § 17.2(a) (defining "antenna structure" to include a structure that is "constructed or used for the primary purpose of supporting antennas to transmit and/or receive radio energy … from the time construction of the supporting structure begins until such time as the supporting structure is dismantled").

Nor does the Commission's definition of "base station" allow wireless providers to extend underlying support structures, including building walls and signs. Pet. Br. 48. Rather, the *Order* allows wireless providers only to "harden" such underlying support structures – that is, to enhance their load-bearing capacity – and even then only when "necessary to support a collocation, removal, or replacement of transmission equipment." *Order* ¶ 180 (JA___); *see also* AT&T Comments at 24 (noting that "non-tower structures … may require hardening to support DAS and small cell deployments") (JA___).

Indeed, the Commission's rules define "collocation" under Section 6409(a)(2)(A) as "[t]he mounting or installation of transmission equipment *on* an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes." 47 C.F.R. § 1.40001(b)(2) (emphasis added). Similarly, "'replacement,' as used in Section 6409(a)(2)(C), relates only to the replacement of 'transmission equipment,'" not "the structure on which the equipment is located." *Order* ¶ 181 (JA___). It follows that a "modification" to "an eligible support structure" is subject to mandatory approval only if the existing support structure, after the "installation," "mounting," or "replacement" of transmission equipment, does not exceed the height and width limits in the

Commission's rules. *See* 47 C.F.R. § 1.40001(b)(7). With the limited exception of hardening – which ordinarily will not involve an increase in the structure's height – nothing in the rules implementing Section 6409(a) permits extension of the support structure itself.

Finally, petitioners assert that "the definition of 'base station' *in toto* is so broad that it lacks any meaningful, confining principles." Pet. Br. 49; *see* Am. Br. 12-14. In particular, petitioners dislike the fact that the Commission acknowledged that with DAS technology, the standard components of a base station (*i.e.*, radio equipment and antennas) may be placed at separate sites, each of which may qualify as a base station. *Order* ¶ 31 (JA___).

Petitioners' argument fails as a matter of law because Section 6409(a) covers only "existing" base stations. "[T]he term 'existing,'" the *Order* explained, "requires that wireless towers or base stations have been reviewed and approved under the applicable local zoning or siting process" or "received another form of affirmative State or local regulatory approval." *Order* ¶ 174 (JA___); *see* 47 C.F.R. § 1.40001(b)(5). The Commission's definition of "existing" therefore imposes a significant limit on its definition of "base station." *See* Pet. Br. 49-50.

Accordingly, an "existing base station" could include "other elements" of a DAS network (not just the "antenna/remote node," Pet. Br. 50), but only

if a State or local government reviewed and approved the deployment of those remote facilities as part of a wireless communications system. *Order* ¶ 174 (JA___); *see* 47 C.F.R. § 1.40001(b)(5). Likewise, "[i]f a local government … grant[ed] a single permit to install a DAS network on a handful of city blocks," that permit could not be used "to add dozens of additional antennas and radio equipment to existing utility poles," Am. Br. 13, unless the locality reviewed and approved the installation of DAS equipment on each pole. Petitioners' assertion that "it is impossible to know" where a base station "begins" or "ends," Br. 50, is baseless, because localities like petitioners must have previously reviewed and approved any base station site for it to come within Section 6409(a).

Petitioners' amici separately contend that the rules adopted in the *Order* could "transmute" wireline facilities into wireless base stations covered by Section 6409(a). Am. Br. 8-11. This argument is not properly before the Court because it was not raised by petitioners. *See Snyder v. Phelps*, 580 F.3d 206, 216-17 (4th Cir. 2009) (arguments waived by petitioner cannot be raised by amicus curiae).

In any event, the argument is wrong. The Commission's Section 6409(a) rules allow modifications only to "eligible support structures," which include a "base station" that "is existing" when a modification application is

filed with a State or local government. 47 C.F.R. § 1.40001(b)(3), (4). A "base station" is "a structure or equipment at a fixed location that enables Commission-licensed or authorized *wireless communications*." *Id.* § 1.40001(b)(1) (emphasis added). Therefore, "a wooden telephone pole" that only "supports transmission equipment" for "*wired* communications" when a facility modification request is filed is not an "existing base station" covered by Section 6409(a). Am. Br. 10 (emphasis added). For the same reason, there can be no question that the Commission in the *Order* "confine[d] preemption to structures approved for use as wireless facilit[ies]." *Id.* at 11.

II. SECTION 6409 AND THE COMMISSION'S RULES ARE CONSTITUIONAL

Petitioners and their amici argue that Section 6409(a) and the Commission's implementing rules violate the Tenth Amendment. That argument is unsound.

"If a power is delegated to Congress in the Constitution, the Tenth Amendment expressly disclaims any reservation of that power to the States." *New York v. United States*, 505 U.S. 144, 156 (1992). The Commerce Clause "is a grant of plenary authority to Congress" to regulate interstate commerce. *Hodel*, 452 U.S. at 276. It empowers the federal government to regulate the construction and operation of wireless facilities. *See Rancho Palos Verdes*,

544 U.S. at 115. Where, as here, a federal regulatory scheme "is supported by affirmative constitutional grants of power to Congress, it is not inconsistent with the Tenth Amendment." *New York*, 505 U.S. at 173; *see also City of Arlington*, 133 S. Ct. at 1873 (a dispute about the FCC rules implementing 47 U.S.C. § 332(c)(7) "has nothing to do with federalism" because that statute "explicitly supplants state authority").

Petitioners and their supporting amici contend the deemed-grant remedy "coerce[s]" compliance by States and localities and thereby violates the Tenth Amendment. Pet. Br. 57; Am. Br. 22. This Court rejected a virtually identical argument in *Verizon Maryland, Inc. v. Global NAPS, Inc.*, 377 F.3d 355 (4th Cir. 2004). There, the Maryland Public Service Commission had challenged the constitutionality of Section 252 of the Communications Act, which authorizes the FCC to assume responsibility for the arbitration and approval of interconnection agreements if a State commission fails to act. *See* 47 U.S.C. § 252(e)(5). Maryland argued that the choice that Section 252 gives to the States – "either undertake [certain] responsibilities or relinquish the authority to regulate to the FCC" – "amounts to unconstitutional coercion" under the Tenth Amendment. *Verizon Maryland*, 377 F.3d at 368. This Court disagreed. "Congress has simply required states to choose between regulating pursuant to federal standards or

allowing the FCC to take over." *Id.* As the Court recognized, "giving states the option to participate in the federally prescribed regulatory scheme … is permissible under the Tenth Amendment." *Id.* (citing *Hodel*, 452 U.S. at 289). So too here, that is effectively what the deemed-grant remedy does.[21]

The deemed-grant remedy is distinguishable from the statutes that the Supreme Court struck down in *Printz*, 521 U.S. 898, and *New York*, 505 U.S. at 174-77. *See Order* ¶ 213 n.593 (JA___). *Printz* concerned a federal law that conscripted State and local law enforcement officers to conduct background checks on prospective handgun purchasers, without giving States the option to turn the program over to federal regulators. *Printz*, 521 U.S. at 902-904, 933-35. The statute in *New York* required States to choose between regulating according to Congress's instructions or "accepting ownership of" – and liability for – radioactive waste generated by private industry. *New York*, 505 U.S. at 175. The Court held that each of those statutes "commandeers the legislative processes of the States by directly compelling them to enact

[21] The Sixth Circuit Court of Appeals rejected a challenge to an analogous rule that "deems granted" an interim cable franchise when a local franchise authority fails to act. *See Alliance for Community Media*, 529 F.3d at 772. Petitioners argue that rule is distinguishable because it requires removal of facilities if the local authority ultimately denies the application. Pet. Br. 60. But the same "practical remedy" is available under the *Order*, *id.*, because a State or locality can challenge a deemed grant in court and request removal of any facilities if it prevails. *Order* ¶ 236 (JA___).

and enforce a federal regulatory program." *Id.* at 176 (internal quotations omitted); *see also Printz*, 521 U.S. at 935. The Commission's deemed-grant remedy in this case, by contrast, does not compel States and localities to enact or enforce anything. Rather, States and localities have a choice: They can approve a facility modification request covered by Section 6409(a) in a timely manner, or they can allow federal rules to fill the void. *See Order* ¶ 213 n.593 (JA___); *Printz*, 521 U.S. at 926 (the federal government does not engage in commandeering when it "ma[kes] compliance with federal standards a precondition to continued state regulation in an otherwise pre-empted field") (citing *Hodel*, 452 U.S. at 288); *id.* at 929 (same).

The *Order* makes clear that States and localities can comply with Section 6409(a) by doing nothing at all. It provides that "an application filed under Section 6409(a) is deemed granted if a State or local government fails to act on it" within 60 days. *Order* ¶¶ 21, 215-20; 47 C.F.R. § 1.40001(c)(4). Thus, a State or locality can take no action whatsoever on eligible facilities requests and instead "devote its attention and its resources to issues its citizens deem more worthy." *New York*, 505 U.S. at 174; *see Verizon Maryland*, 377 F.3d at 368.

Finally, petitioners and their amici emphasize the importance of "political accountability." *See* Pet. Br. 57, 60-61; Am. Br. 23-24. Their

complaint, however, is that Section 6409(a) bars States and localities from regulating in a manner prohibited by federal law. *See* Pet. Br. 58; Am. Br. 23. This, in turn, is merely a quarrel with Congress's decision to use its Commerce Clause power to preempt State and local regulation that needlessly delays the deployment of wireless communications infrastructure. In any event, States and localities can readily point to federal law as the source of the restrictions on their authority. Where the State or locality fails to act, the application must be granted under Section 6409(a) and the Commission's implementing rules. Indeed, the *Order* anticipates that "an applicant whose application has been deemed granted might seek some form of judicial imprimatur for the grant" – an imprimatur that would not be necessary if the application had been granted by the zoning authority under State or local law. *Order* ¶ 236 (JA___). Consequently, Section 6409(a) does not give rise to accountability concerns.

CONCLUSION

The petitions for review should be denied.

Respectfully submitted,

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June 9, 2015

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

MONTGOMERY COUNTY, MARYLAND, ET AL., PETITIONERS, v. FEDERAL COMMUNICATIONS COMMISSION AND UNITED STATES OF AMERICA, RESPONDENTS.	NOS. 15-1240 & 15-1284

CERTIFICATE OF COMPLIANCE

Pursuant to the requirements of Fed. R. App. P. 32(a)(7), I hereby certify that the accompanying Brief for Respondents in the captioned case contains 11,819 words.

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June 9, 2015

Technical Appendix

Distributed Antenna Systems and Small Cell Technologies

Fact Sheet for Tribal Nations and Native Hawaiian Organizations

April 2015

Background

The increasing demand for advanced wireless services and greater wireless bandwidth is driving an urgent and growing need for additional infrastructure deployment and new infrastructure technologies. Consumers continue to increase their reliance on and use of mobile broadband services. According to one estimate, Americans will have 34 million mobile broadband devices by the end of 2015,[1] an increase of nearly 50% from 2013, and the volume of data crossing North American mobile networks will grow almost eight-fold between 2013 and 2018.[2] To meet localized needs for coverage and increased capacity in outdoor and indoor environments, many wireless providers have turned in part to Distributed Antenna System (DAS) and small cell technologies to augment the use of traditional communications towers, also known as macrocells.

Use of DAS and Small Cells

Small cells are low-powered wireless base stations that function like cells in a mobile wireless network, typically covering targeted indoor or localized outdoor areas ranging in size from homes and offices to stadiums, shopping malls, hospitals, and urban outdoor spaces. Wireless service providers often use small cells to provide connectivity to their subscribers in areas that present capacity and coverage challenges. Because these cells are significantly smaller in coverage area than traditional macrocells, networks that incorporate small cell technology can reuse scarce wireless frequencies, thus greatly increasing data capacity. For example, deploying ten small cells in a coverage area in place of a single macrocell could result in a tenfold increase in capacity while using the same quantity of spectrum.

DAS provides another alternative to macrocells mounted on tall antenna structures/communications towers. A DAS network distributes radio signals from a central hub to remote DAS nodes in a specific service area with poor coverage or inadequate capacity. DAS deployments offer robust and broad coverage without creating the visual and physical impacts of multiple macrocells. Further, whereas small cells are usually operator-managed and support only

[1] See "34 Million Americans will have Mobile Broadband Devices," April 22, 2014, available at http://www.ctia.org/resource-library/facts-and-infographics/archive/34-million-americans-mobile-broadband-devices.

[2] See Alina Selyukh, Reuters, "U.S. mobile data traffic to jump nearly eight-fold by 2018: Cisco," Feb. 5, 2014, available at http://www.reuters.com/article/2014/02/05/us-usa-spectrum-cisco-idUSBREA140VY20140205.

a single wireless service provider, neutral-host DAS networks can often accommodate multiple providers, including public safety services.[3]

DAS and small cell facilities provide advantages for densely populated urban areas where traditional towers are not feasible. Because the facilities deployed at each node are physically much smaller than macrocell antennas and associated equipment and do not require the same elevation, they are often placed on light posts, utility poles, building walls and rooftops, and other pre-existing small structures, either privately owned or in the public rights-of-way. Furthermore, providers can more easily deploy them with stealth measures, such as concealment enclosures that blend with the structures on which they are installed. In addition, because these technologies utilize small equipment and transmit at signal power levels much lower than macrocells, they can be deployed in indoor environments to improve interior wireless services.

Below are pictures and a diagram of typical small cell and DAS installations.

[3] *See, e.g.*, "Small cell definition" *available at* http://www.smallcellforum.org/about/about-small-cells/small-cell-definition/; "Distinguishing DAS Networks from Small Cells," *available at* http://www.thedasforum.org/resources/send/2-resources/24-das-and-small-cell-technologies-distinguished at 4.

Pictures of Typical Small Cell and DAS Deployments

Photo 1. Small Cell Deployment[4]

[4] Letter from Robert Vitanza, General Attorney, AT&T Services, Inc., to Marlene Dortch, Secretary, Federal Communications Commission, WT Docket Nos. 13-238, 13-32; WC Docket No. 11-59 (filed August 11, 2014).

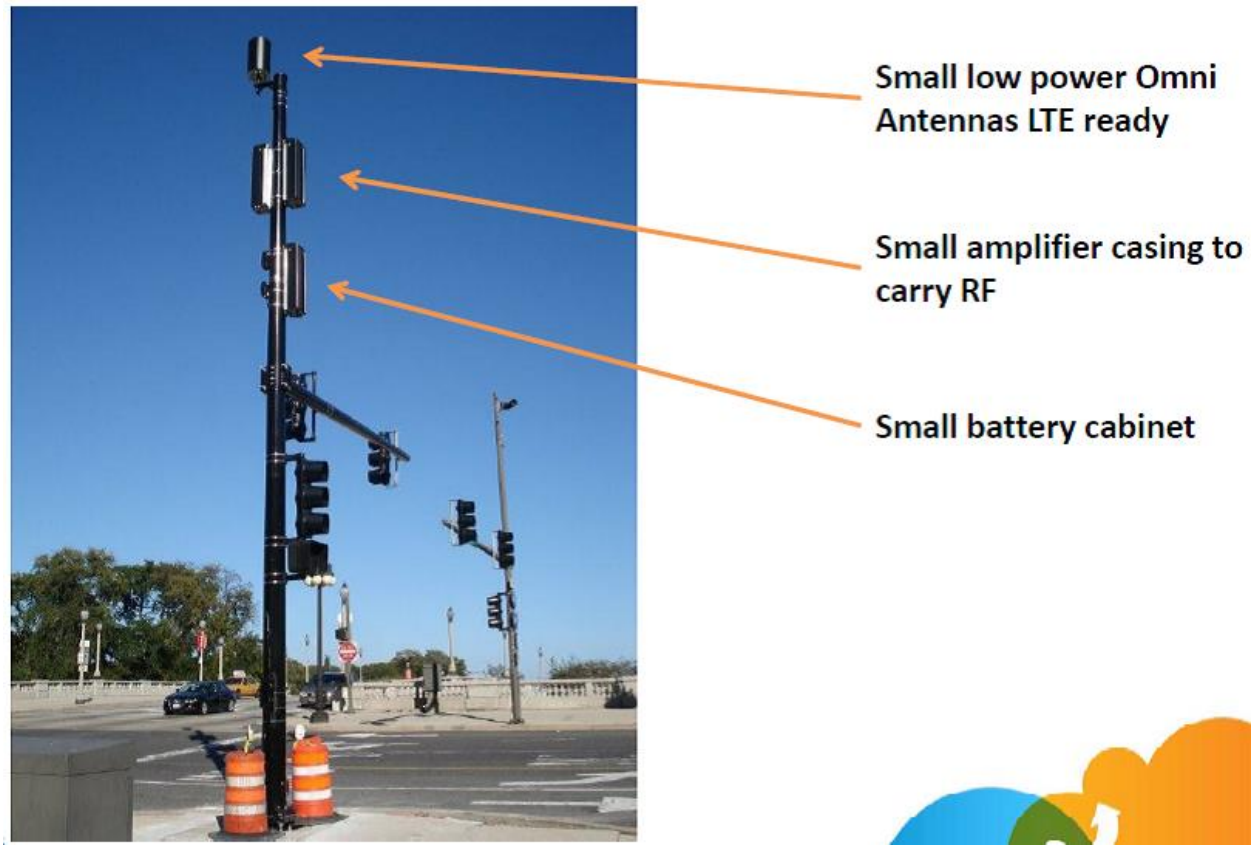

Photo 2. DAS Deployment[5]

[5] Letter from Colleen Thompson, AT&T, to Marlene Dortch, Secretary, Federal Communications Commission, WC Docket No. 11-59 (filed June 17, 2013).

Photo 3. Deployment at Colonial Williamsburg, a Historic Landmark in Virginia[6]

[6] Letter from Robert Millar, Associate General Counsel, Crown Castle, to Marlene Dortch, Secretary, Federal Communications Commission, WT Docket No. 13-238; WC Docket No. 11-59 (filed September 10, 2014).

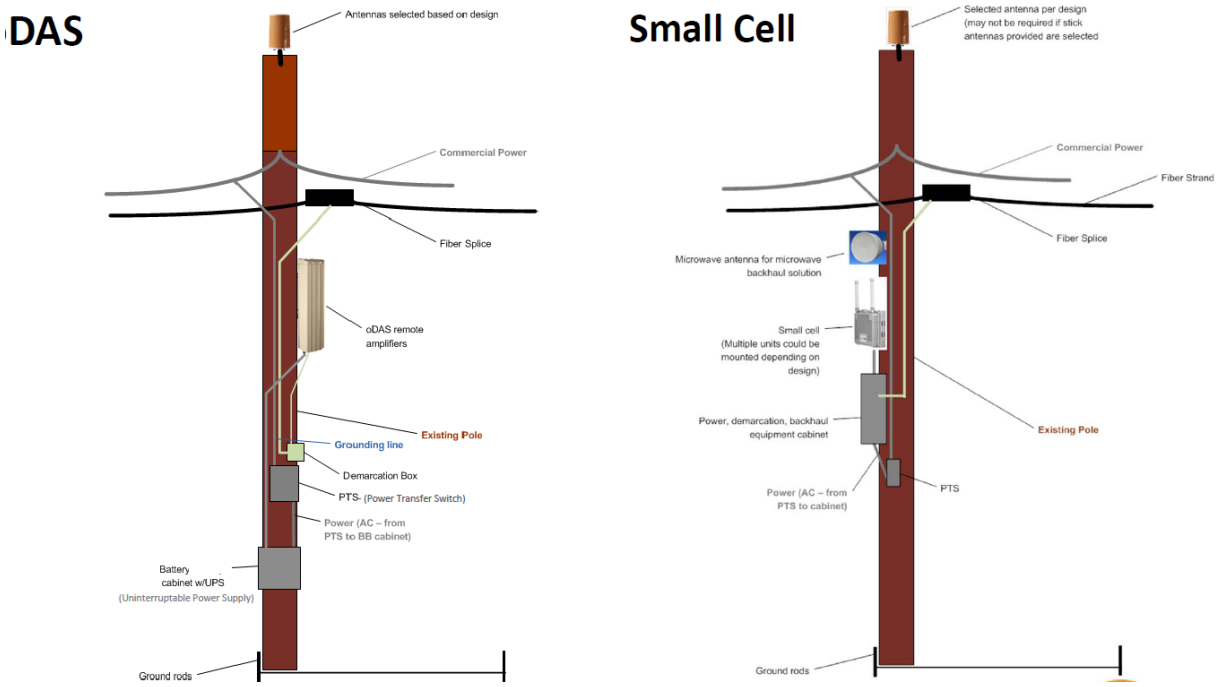

Photo 4. Small Cell and DAS Comparison[7]

[7] Letter from Colleen Thompson, AT&T, to Marlene Dortch, Secretary, Federal Communications Commission, WC Docket No. 11-59 (filed June 17, 2013).

Statutory and Regulatory Appendix

United States Code Annotated
Title 5. Government Organization and Employees (Refs & Annos)
Part I. The Agencies Generally
Chapter 7. Judicial Review (Refs & Annos)

5 U.S.C.A. § 706

§ 706. Scope of review

Currentness

To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall--

(1) compel agency action unlawfully withheld or unreasonably delayed; and

(2) hold unlawful and set aside agency action, findings, and conclusions found to be--

(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(B) contrary to constitutional right, power, privilege, or immunity;

(C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;

(D) without observance of procedure required by law;

(E) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or

(F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.

In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.

CREDIT(S)

(Pub.L. 89-554, Sept. 6, 1966, 80 Stat. 393.)

Notes of Decisions (3517)

5 U.S.C.A. § 706, 5 USCA § 706

Current through P.L. 114-9 approved 4-7-2015

End of Document

United States Code Annotated
Title 42. The Public Health and Welfare
Chapter 55. National Environmental Policy (Refs & Annos)
Subchapter I. Policies and Goals (Refs & Annos)

42 U.S.C.A. § 4332

§ 4332. Cooperation of agencies; reports; availability of information; recommendations; international and national coordination of efforts

Currentness

The Congress authorizes and directs that, to the fullest extent possible: (1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this chapter, and (2) all agencies of the Federal Government shall--

(A) utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment;

(B) identify and develop methods and procedures, in consultation with the Council on Environmental Quality established by subchapter II of this chapter, which will insure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations;

(C) include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on--

(i) the environmental impact of the proposed action,

(ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,

(iii) alternatives to the proposed action,

(iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and

(v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

Prior to making any detailed statement, the responsible Federal official shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate Federal, State, and local agencies, which are authorized to develop and enforce environmental standards, shall be made available to the President, the Council on Environmental Quality and to the public as provided by section 552 of Title 5, and shall accompany the proposal through the existing agency review processes;

(D) Any detailed statement required under subparagraph (C) after January 1, 1970, for any major Federal action funded under a program of grants to States shall not be deemed to be legally insufficient solely by reason of having been prepared by a State agency or official, if:

(i) the State agency or official has statewide jurisdiction and has the responsibility for such action,

(ii) the responsible Federal official furnishes guidance and participates in such preparation,

(iii) the responsible Federal official independently evaluates such statement prior to its approval and adoption, and

(iv) after January 1, 1976, the responsible Federal official provides early notification to, and solicits the views of, any other State or any Federal land management entity of any action or any alternative thereto which may have significant impacts upon such State or affected Federal land management entity and, if there is any disagreement on such impacts, prepares a written assessment of such impacts and views for incorporation into such detailed statement.

The procedures in this subparagraph shall not relieve the Federal official of his responsibilities for the scope, objectivity, and content of the entire statement or of any other responsibility under this chapter; and further, this subparagraph does not affect the legal sufficiency of statements prepared by State agencies with less than statewide jurisdiction.[1]

(E) study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;

(F) recognize the worldwide and long-range character of environmental problems and, where consistent with the foreign policy of the United States, lend appropriate support to initiatives, resolutions, and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of mankind's world environment;

(G) make available to States, counties, municipalities, institutions, and individuals, advice and information useful in restoring, maintaining, and enhancing the quality of the environment;

(H) initiate and utilize ecological information in the planning and development of resource-oriented projects; and

(I) assist the Council on Environmental Quality established by subchapter II of this chapter.

CREDIT(S)

(Pub.L. 91-190, Title I, § 102, Jan. 1, 1970, 83 Stat. 853; Pub.L. 94-83, Aug. 9, 1975, 89 Stat. 424.)

EXECUTIVE ORDERS

EXECUTIVE ORDER NO. 13352

<Aug. 26, 2004, 69 F.R. 52989>

FACILITATION OF COOPERATIVE CONSERVATION

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. Purpose. The purpose of this order is to ensure that the Departments of the Interior, Agriculture, Commerce, and Defense and the Environmental Protection Agency implement laws relating to the environment and natural resources in a manner that promotes cooperative conservation, with an emphasis on appropriate inclusion of local participation in Federal decisionmaking, in accordance with their respective agency missions, policies, and regulations.

Sec. 2. Definition. As used in this order, the term "cooperative conservation" means actions that relate to use, enhancement, and enjoyment of natural resources, protection of the environment, or both, and that involve collaborative activity among Federal, State, local, and tribal governments, private for-profit and nonprofit institutions, other nongovernmental entities and individuals.

Sec. 3. Federal Activities. To carry out the purpose of this order, the Secretaries of the Interior, Agriculture, Commerce, and Defense and the Administrator of the Environmental Protection Agency shall, to the extent permitted by law and subject to the availability of appropriations and in coordination with each other as appropriate:

(a) carry out the programs, projects, and activities of the agency that they respectively head that implement laws relating to the environment and natural resources in a manner that:

(i) facilitates cooperative conservation;

(ii) takes appropriate account of and respects the interests of persons with ownership or other legally recognized interests in land and other natural resources;

(iii) properly accommodates local participation in Federal decisionmaking; and

(iv) provides that the programs, projects, and activities are consistent with protecting public health and safety;

(b) report annually to the Chairman of the Council on Environmental Quality on actions taken to implement this order; and

(c) provide funding to the Office of Environmental Quality Management Fund (42 U.S.C. 4375) for the Conference for which section 4 of this order provides.

Sec. 4. White House Conference on Cooperative Conservation. The Chairman of the Council on Environmental Quality shall, to the extent permitted by law and subject to the availability of appropriations:

(a) convene not later than 1 year after the date of this order, and thereafter at such times as the Chairman deems appropriate, a White House Conference on Cooperative Conservation (Conference) to facilitate the exchange of information and advice relating to (i) cooperative conservation and (ii) means for achievement of the purpose of this order; and

(b) ensure that the Conference obtains information in a manner that seeks from Conference participants their individual advice and does not involve collective judgment or consensus advice or deliberation.

Sec. 5. General Provision. This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, instrumentalities or entities, its officers, employees or agents, or any other person.

GEORGE W. BUSH

Notes of Decisions (4392)

Footnotes

1 So in original. The period probably should be a semicolon.

42 U.S.C.A. § 4332, 42 USCA § 4332
Current through P.L. 114-9 approved 4-7-2015

End of Document

United States Code Annotated
Title 47. Telecommunications (Refs & Annos)
Chapter 5. Wire or Radio Communication (Refs & Annos)
Subchapter I. General Provisions (Refs & Annos)

47 U.S.C.A. § 153

§ 153. Definitions

Effective: October 8, 2010
Currentness

For the purposes of this chapter, unless the context otherwise requires--

(1) Advanced communications services

The term “advanced communications services” means--

(A) interconnected VoIP service;

(B) non-interconnected VoIP service;

(C) electronic messaging service; and

(D) interoperable video conferencing service.

(2) Affiliate

The term “affiliate” means a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of this paragraph, the term “own” means to own an equity interest (or the equivalent thereof) of more than 10 percent.

(3) Amateur station

The term “amateur station” means a radio station operated by a duly authorized person interested in radio technique solely with a personal aim and without pecuniary interest.

(4) AT&T Consent Decree

The term “AT&T Consent Decree” means the order entered August 24, 1982, in the antitrust action styled United States v. Western Electric, Civil Action No. 82-0192, in the United States District Court for the District of Columbia, and includes any judgment or order with respect to such action entered on or after August 24, 1982.

(5) Bell operating company

The term “Bell operating company”--

(A) means any of the following companies: Bell Telephone Company of Nevada, Illinois Bell Telephone Company, Indiana Bell Telephone Company, Incorporated, Michigan Bell Telephone Company, New England Telephone and Telegraph Company, New Jersey Bell Telephone Company, New York Telephone Company, US West Communications Company, South Central Bell Telephone Company, Southern Bell Telephone and Telegraph Company, Southwestern Bell Telephone Company, The Bell Telephone Company of Pennsylvania, The Chesapeake and Potomac Telephone Company, The Chesapeake and Potomac Telephone Company of Maryland, The Chesapeake and Potomac Telephone Company of Virginia, The Chesapeake and Potomac Telephone Company of West Virginia, The Diamond State Telephone Company, The Ohio Bell Telephone Company, The Pacific Telephone and Telegraph Company, or Wisconsin Telephone Company; and

(B) includes any successor or assign of any such company that provides wireline telephone exchange service; but

(C) does not include an affiliate of any such company, other than an affiliate described in subparagraph (A) or (B).

(6) Broadcast station

The term “broadcast station”, “broadcasting station”, or “radio broadcast station” means a radio station equipped to engage in broadcasting as herein defined.

(7) Broadcasting

The term “broadcasting” means the dissemination of radio communications intended to be received by the public, directly or by the intermediary of relay stations.

(8) Cable service

The term “cable service” has the meaning given such term in section 522 of this title.

(9) Cable system

The term “cable system” has the meaning given such term in section 522 of this title.

(10) Chain broadcasting

The term “chain broadcasting” means simultaneous broadcasting of an identical program by two or more connected stations.

(11) Common carrier

The term “common carrier” or “carrier” means any person engaged as a common carrier for hire, in interstate or foreign communication by wire or radio or interstate or foreign radio transmission of energy, except where reference is made to common carriers not subject to this chapter; but a person engaged in radio broadcasting shall not, insofar as such person is so engaged, be deemed a common carrier.

(12) Connecting carrier

The term “connecting carrier” means a carrier described in clauses (2), (3), or (4) of section 152(b) of this title.

(13) Construction permit

The term “construction permit” or “permit for construction” means that instrument of authorization required by this chapter or the rules and regulations of the Commission made pursuant to this chapter for the construction of a station, or the installation of apparatus, for the transmission of energy, or communications, or signals by radio, by whatever name the instrument may be designated by the Commission.

(14) Consumer generated media

The term “consumer generated media” means content created and made available by consumers to online websites and services on the Internet, including video, audio, and multimedia content.

(15) Corporation

The term “corporation” includes any corporation, joint-stock company, or association.

(16) Customer premises equipment

The term “customer premises equipment” means equipment employed on the premises of a person (other than a carrier) to originate, route, or terminate telecommunications.

(17) Dialing parity

The term “dialing parity” means that a person that is not an affiliate of a local exchange carrier is able to provide telecommunications services in such a manner that customers have the ability to route automatically, without the use of any access code, their telecommunications to the telecommunications services provider of the customer's designation from among 2 or more telecommunications services providers (including such local exchange carrier).

(18) Disability

The term “disability” has the meaning given such term under section 12102 of Title 42.

(19) Electronic messaging service

The term “electronic messaging service” means a service that provides real-time or near real-time non-voice messages in text form between individuals over communications networks.

(20) Exchange access

The term “exchange access” means the offering of access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services.

(21) Foreign communication

The term “foreign communication” or “foreign transmission” means communication or transmission from or to any place in the United States to or from a foreign country, or between a station in the United States and a mobile station located outside the United States.

(22) Great Lakes Agreement

The term “Great Lakes Agreement” means the Agreement for the Promotion of Safety on the Great Lakes by Means of Radio in force and the regulations referred to therein.

(23) Harbor

The term “harbor” or “port” means any place to which ships may resort for shelter or to load or unload passengers or goods, or to obtain fuel, water, or supplies. This term shall apply to such places whether proclaimed public or not and whether natural or artificial.

(24) Information service

The term “information service” means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service.

(25) Interconnected VoIP service

The term “interconnected VoIP service” has the meaning given such term under section 9.3 of title 47, Code of Federal Regulations, as such section may be amended from time to time.

(26) InterLATA service

The term “interLATA service” means telecommunications between a point located in a local access and transport area and a point located outside such area.

(27) Interoperable video conferencing service

The term “interoperable video conferencing service” means a service that provides real-time video communications, including audio, to enable users to share information of the user's choosing.

(28) Interstate communication

The term “interstate communication” or “interstate transmission” means communication or transmission (A) from any State, Territory, or possession of the United States (other than the Canal Zone), or the District of Columbia, to any other State, Territory, or possession of the United States (other than the Canal Zone), or the District of Columbia, (B) from or to the United States to or from the Canal Zone, insofar as such communication or transmission takes place within the United States, or (C) between points within the United States but through a foreign country; but shall not, with respect to the provisions of subchapter II of this chapter (other than section 223 of this title), include wire or radio communication between points in the same State, Territory, or possession of the United States, or the District of Columbia, through any place outside thereof, if such communication is regulated by a State commission.

(29) Land station

The term “land station” means a station, other than a mobile station, used for radio communication with mobile stations.

(30) Licensee

The term “licensee” means the holder of a radio station license granted or continued in force under authority of this chapter.

(31) Local access and transport area

The term “local access and transport area” or “LATA” means a contiguous geographic area--

(A) established before February 8, 1996, by a Bell operating company such that no exchange area includes points within more than 1 metropolitan statistical area, consolidated metropolitan statistical area, or State, except as expressly permitted under the AT&T Consent Decree; or

(B) established or modified by a Bell operating company after February 8, 1996, and approved by the Commission.

(32) Local exchange carrier

The term “local exchange carrier” means any person that is engaged in the provision of telephone exchange service or exchange access. Such term does not include a person insofar as such person is engaged in the provision of a commercial mobile service under section 332(c) of this title, except to the extent that the Commission finds that such service should be included in the definition of such term.

(33) Mobile service

The term “mobile service” means a radio communication service carried on between mobile stations or receivers and land stations, and by mobile stations communicating among themselves, and includes (A) both one-way and two-way radio communication services, (B) a mobile service which provides a regularly interacting group of base, mobile, portable, and associated control and relay stations (whether licensed on an individual, cooperative, or multiple basis) for private one-way or two-way land mobile radio communications by eligible users over designated areas of operation, and (C) any service for which a license is required in a personal communications service established pursuant to the proceeding entitled “Amendment to the Commission's Rules to Establish New Personal Communications Services” (GEN Docket No. 90-314; ET Docket No. 92-100), or any successor proceeding.

(34) Mobile station

The term “mobile station” means a radio-communication station capable of being moved and which ordinarily does move.

(35) Network element

The term “network element” means a facility or equipment used in the provision of a telecommunications service. Such term also includes features, functions, and capabilities that are provided by means of such facility or equipment, including subscriber numbers, databases, signaling systems, and information sufficient for billing and collection or used in the transmission, routing, or other provision of a telecommunications service.

(36) Non-interconnected VoIP service

The term “non-interconnected VoIP service”--

(A) means a service that--

(i) enables real-time voice communications that originate from or terminate to the user's location using Internet protocol or any successor protocol; and

(ii) requires Internet protocol compatible customer premises equipment; and

(B) does not include any service that is an interconnected VoIP service.

(37) Number portability

The term “number portability” means the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another.

(38) Operator

(A) The term "operator" on a ship of the United States means, for the purpose of parts II and III of subchapter III of this chapter, a person holding a radio operator's license of the proper class as prescribed and issued by the Commission.

(B) "Operator" on a foreign ship means, for the purpose of part II of subchapter III of this chapter, a person holding a certificate as such of the proper class complying with the provisions of the radio regulations annexed to the International Telecommunication Convention in force, or complying with an agreement or treaty between the United States and the country in which the ship is registered.

(39) Person

The term "person" includes an individual, partnership, association, joint-stock company, trust, or corporation.

(40) Radio communication

The term "radio communication" or "communication by radio" means the transmission by radio of writing, signs, signals, pictures, and sounds of all kinds, including all instrumentalities, facilities, apparatus, and services (among other things, the receipt, forwarding, and delivery of communications) incidental to such transmission.

(41) Radio officer

(A) The term "radio officer" on a ship of the United States means, for the purpose of part II of subchapter III of this chapter, a person holding at least a first or second class radiotelegraph operator's license as prescribed and issued by the Commission. When such person is employed to operate a radiotelegraph station aboard a ship of the United States, he is also required to be licensed as a "radio officer" in accordance with chapter 71 of Title 46.

(B) "Radio officer" on a foreign ship means, for the purpose of part II of subchapter III of this chapter, a person holding at least a first or second class radiotelegraph operator's certificate complying with the provisions of the radio regulations annexed to the International Telecommunication Convention in force.

(42) Radio station

The term "radio station" or "station" means a station equipped to engage in radio communication or radio transmission of energy.

(43) Radiotelegraph auto alarm

The term "radiotelegraph auto alarm" on a ship of the United States subject to the provisions of part II of subchapter III of this chapter means an automatic alarm receiving apparatus which responds to the radiotelegraph alarm signal and has been approved by the Commission. "Radiotelegraph auto alarm" on a foreign ship means an automatic alarm receiving apparatus which responds to the radiotelegraph alarm signal and has been approved by the government of the country in which the ship is registered: *Provided*, That the United States and the country in which the ship is registered are parties to the same treaty, convention, or agreement prescribing the requirements for such apparatus. Nothing in this chapter or in any other provision of law shall be construed to require the recognition of a radiotelegraph auto alarm as complying with part II of subchapter

III of this chapter, on a foreign ship subject to part II of subchapter III of this chapter, where the country in which the ship is registered and the United States are not parties to the same treaty, convention, or agreement prescribing the requirements for such apparatus.

(44) Rural telephone company

The term "rural telephone company" means a local exchange carrier operating entity to the extent that such entity--

(A) provides common carrier service to any local exchange carrier study area that does not include either--

(i) any incorporated place of 10,000 inhabitants or more, or any part thereof, based on the most recently available population statistics of the Bureau of the Census; or

(ii) any territory, incorporated or unincorporated, included in an urbanized area, as defined by the Bureau of the Census as of August 10, 1993;

(B) provides telephone exchange service, including exchange access, to fewer than 50,000 access lines;

(C) provides telephone exchange service to any local exchange carrier study area with fewer than 100,000 access lines; or

(D) has less than 15 percent of its access lines in communities of more than 50,000 on February 8, 1996.

(45) Safety convention

The term "safety convention" means the International Convention for the Safety of Life at Sea in force and the regulations referred to therein.

(46) Ship

(A) The term "ship" or "vessel" includes every description of watercraft or other artificial contrivance, except aircraft, used or capable of being used as a means of transportation on water, whether or not it is actually afloat.

(B) A ship shall be considered a passenger ship if it carries or is licensed or certificated to carry more than twelve passengers.

(C) A cargo ship means any ship not a passenger ship.

(D) A passenger is any person carried on board a ship or vessel except (1) the officers and crew actually employed to man and operate the ship, (2) persons employed to carry on the business of the ship, and (3) persons on board a ship when they are carried, either because of the obligation laid upon the master to carry shipwrecked, distressed, or other persons in like

or similar situations or by reason of any circumstance over which neither the master, the owner, nor the charterer (if any) has control.

(E) "Nuclear ship" means a ship provided with a nuclear powerplant.

(47) State

The term "State" includes the District of Columbia and the Territories and possessions.

(48) State commission

The term "State commission" means the commission, board, or official (by whatever name designated) which under the laws of any State has regulatory jurisdiction with respect to intrastate operations of carriers.

(49) Station license

The term "station license", "radio station license", or "license" means that instrument of authorization required by this chapter or the rules and regulations of the Commission made pursuant to this chapter, for the use or operation of apparatus for transmission of energy, or communications, or signals by radio, by whatever name the instrument may be designated by the Commission.

(50) Telecommunications

The term "telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

(51) Telecommunications carrier

The term "telecommunications carrier" means any provider of telecommunications services, except that such term does not include aggregators of telecommunications services (as defined in section 226 of this title). A telecommunications carrier shall be treated as a common carrier under this chapter only to the extent that it is engaged in providing telecommunications services, except that the Commission shall determine whether the provision of fixed and mobile satellite service shall be treated as common carriage.

(52) Telecommunications equipment

The term "telecommunications equipment" means equipment, other than customer premises equipment, used by a carrier to provide telecommunications services, and includes software integral to such equipment (including upgrades).

(53) Telecommunications service

The term "telecommunications service" means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

(54) Telephone exchange service

The term “telephone exchange service” means (A) service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge, or (B) comparable service provided through a system of switches, transmission equipment, or other facilities (or combination thereof) by which a subscriber can originate and terminate a telecommunications service.

(55) Telephone toll service

The term “telephone toll service” means telephone service between stations in different exchange areas for which there is made a separate charge not included in contracts with subscribers for exchange service.

(56) Television service

(A) Analog television service

The term “analog television service” means television service provided pursuant to the transmission standards prescribed by the Commission in section 73.682(a) of its regulations (47 C.F.R. 73.682(a)).

(B) Digital television service

The term “digital television service” means television service provided pursuant to the transmission standards prescribed by the Commission in section 73.682(d) of its regulations (47 C.F.R. 73.682(d)).

(57) Transmission of energy by radio

The term “transmission of energy by radio” or “radio transmission of energy” includes both such transmission and all instrumentalities, facilities, and services incidental to such transmission.

(58) United States

The term “United States” means the several States and Territories, the District of Columbia, and the possessions of the United States, but does not include the Canal Zone.

(59) Wire communication

The term “wire communication” or “communication by wire” means the transmission of writing, signs, signals, pictures, and sounds of all kinds by aid of wire, cable, or other like connection between the points of origin and reception of such transmission, including all instrumentalities, facilities, apparatus, and services (among other things, the receipt, forwarding, and delivery of communications) incidental to such transmission.

CREDIT(S)

(June 19, 1934, c. 652, Title I, § 3, 48 Stat. 1065; May 20, 1937, c. 229, § 2, 50 Stat. 189; 1946 Proc. No. 2695, eff. July 4, 1946, 11 F.R. 7517, 60 Stat. 1352; July 16, 1952, c. 879, § 2, 66 Stat. 711; Apr. 27, 1954, c. 175, §§ 2, 3, 68 Stat. 64; Aug. 13, 1954, c. 729, § 3, 68 Stat. 707; Aug. 13, 1954, c. 735, § 1, 68 Stat. 729; Aug. 6, 1956, c. 973, § 3, 70 Stat. 1049; Pub.L. 89-121, § 1, Aug. 13, 1965, 79 Stat. 511; Pub.L. 90-299, § 2, May 3, 1968, 82 Stat. 112; Pub.L. 97-259, Title I, § 120(b), Sept. 13, 1982, 96 Stat. 1097; Pub.L. 103-66, Title VI, § 6002(b)(2)(B)(ii), Aug. 10, 1993, 107 Stat. 396; Pub.L. 104-104, § 3(a), (c), Feb. 8, 1996, 110 Stat. 58, 61; Pub.L. 105-33, Title III, § 3001(b), Aug. 5, 1997, 111 Stat. 258; Pub.L. 111-260, Title I, § 101, Oct. 8, 2010, 124 Stat. 2752.)

Notes of Decisions (69)

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United States Code Annotated
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Chapter 5. Wire or Radio Communication (Refs & Annos)
Subchapter II. Common Carriers (Refs & Annos)
Part II. Development of Competitive Markets (Refs & Annos)

47 U.S.C.A. § 251

§ 251. Interconnection

Effective: October 26, 1999
Currentness

(a) General duty of telecommunications carriers

Each telecommunications carrier has the duty--

(1) to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers; and

(2) not to install network features, functions, or capabilities that do not comply with the guidelines and standards established pursuant to section 255 or 256 of this title.

(b) Obligations of all local exchange carriers

Each local exchange carrier has the following duties:

(1) Resale

The duty not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of its telecommunications services.

(2) Number portability

The duty to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission.

(3) Dialing parity

The duty to provide dialing parity to competing providers of telephone exchange service and telephone toll service, and the duty to permit all such providers to have nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listing, with no unreasonable dialing delays.

(4) Access to rights-of-way

The duty to afford access to the poles, ducts, conduits, and rights-of-way of such carrier to competing providers of telecommunications services on rates, terms, and conditions that are consistent with section 224 of this title.

(5) Reciprocal compensation

The duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications.

(c) Additional obligations of incumbent local exchange carriers

In addition to the duties contained in subsection (b) of this section, each incumbent local exchange carrier has the following duties:

(1) Duty to negotiate

The duty to negotiate in good faith in accordance with section 252 of this title the particular terms and conditions of agreements to fulfill the duties described in paragraphs (1) through (5) of subsection (b) of this section and this subsection. The requesting telecommunications carrier also has the duty to negotiate in good faith the terms and conditions of such agreements.

(2) Interconnection

The duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network--

(A) for the transmission and routing of telephone exchange service and exchange access;

(B) at any technically feasible point within the carrier's network;

(C) that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection; and

(D) on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms and conditions of the agreement and the requirements of this section and section 252 of this title.

(3) Unbundled access

The duty to provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of the agreement and the requirements of this section and section 252 of this title. An incumbent local exchange carrier shall provide such unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service.

(4) Resale

The duty--

(A) to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers; and

(B) not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of such telecommunications service, except that a State commission may, consistent with regulations prescribed by the Commission under this section, prohibit a reseller that obtains at wholesale rates a telecommunications service that is available at retail only to a category of subscribers from offering such service to a different category of subscribers.

(5) Notice of changes

The duty to provide reasonable public notice of changes in the information necessary for the transmission and routing of services using that local exchange carrier's facilities or networks, as well as of any other changes that would affect the interoperability of those facilities and networks.

(6) Collocation

The duty to provide, on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, for physical collocation of equipment necessary for interconnection or access to unbundled network elements at the premises of the local exchange carrier, except that the carrier may provide for virtual collocation if the local exchange carrier demonstrates to the State commission that physical collocation is not practical for technical reasons or because of space limitations.

(d) Implementation

(1) In general

Within 6 months after February 8, 1996, the Commission shall complete all actions necessary to establish regulations to implement the requirements of this section.

(2) Access standards

In determining what network elements should be made available for purposes of subsection (c)(3) of this section, the Commission shall consider, at a minimum, whether--

(A) access to such network elements as are proprietary in nature is necessary; and

(B) the failure to provide access to such network elements would impair the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer.

(3) Preservation of State access regulations

In prescribing and enforcing regulations to implement the requirements of this section, the Commission shall not preclude the enforcement of any regulation, order, or policy of a State commission that--

(A) establishes access and interconnection obligations of local exchange carriers;

(B) is consistent with the requirements of this section; and

(C) does not substantially prevent implementation of the requirements of this section and the purposes of this part.

(e) Numbering administration

(1) Commission authority and jurisdiction

The Commission shall create or designate one or more impartial entities to administer telecommunications numbering and to make such numbers available on an equitable basis. The Commission shall have exclusive jurisdiction over those portions of the North American Numbering Plan that pertain to the United States. Nothing in this paragraph shall preclude the Commission from delegating to State commissions or other entities all or any portion of such jurisdiction.

(2) Costs

The cost of establishing telecommunications numbering administration arrangements and number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission.

(3) Universal emergency telephone number

The Commission and any agency or entity to which the Commission has delegated authority under this subsection shall designate 9-1-1 as the universal emergency telephone number within the United States for reporting an emergency to appropriate authorities and requesting assistance. The designation shall apply to both wireline and wireless telephone service. In making the designation, the Commission (and any such agency or entity) shall provide appropriate transition periods for areas in which 9-1-1 is not in use as an emergency telephone number on October 26, 1999.

(f) Exemptions, suspensions, and modifications

(1) Exemption for certain rural telephone companies

(A) Exemption

Subsection (c) of this section shall not apply to a rural telephone company until (i) such company has received a bona fide request for interconnection, services, or network elements, and (ii) the State commission determines (under subparagraph

(B)) that such request is not unduly economically burdensome, is technically feasible, and is consistent with section 254 of this title (other than subsections (b)(7) and (c)(1)(D) thereof).

(B) State termination of exemption and implementation schedule

The party making a bona fide request of a rural telephone company for interconnection, services, or network elements shall submit a notice of its request to the State commission. The State commission shall conduct an inquiry for the purpose of determining whether to terminate the exemption under subparagraph (A). Within 120 days after the State commission receives notice of the request, the State commission shall terminate the exemption if the request is not unduly economically burdensome, is technically feasible, and is consistent with section 254 of this title (other than subsections (b)(7) and (c)(1)(D) thereof). Upon termination of the exemption, a State commission shall establish an implementation schedule for compliance with the request that is consistent in time and manner with Commission regulations.

(C) Limitation on exemption

The exemption provided by this paragraph shall not apply with respect to a request under subsection (c) of this section from a cable operator providing video programming, and seeking to provide any telecommunications service, in the area in which the rural telephone company provides video programming. The limitation contained in this subparagraph shall not apply to a rural telephone company that is providing video programming on February 8, 1996.

(2) Suspensions and modifications for rural carriers

A local exchange carrier with fewer than 2 percent of the Nation's subscriber lines installed in the aggregate nationwide may petition a State commission for a suspension or modification of the application of a requirement or requirements of subsection (b) or (c) of this section to telephone exchange service facilities specified in such petition. The State commission shall grant such petition to the extent that, and for such duration as, the State commission determines that such suspension or modification--

(A) is necessary--

(i) to avoid a significant adverse economic impact on users of telecommunications services generally;

(ii) to avoid imposing a requirement that is unduly economically burdensome; or

(iii) to avoid imposing a requirement that is technically infeasible; and

(B) is consistent with the public interest, convenience, and necessity.

The State commission shall act upon any petition filed under this paragraph within 180 days after receiving such petition. Pending such action, the State commission may suspend enforcement of the requirement or requirements to which the petition applies with respect to the petitioning carrier or carriers.

(g) Continued enforcement of exchange access and interconnection requirements

On and after February 8, 1996, each local exchange carrier, to the extent that it provides wireline services, shall provide exchange access, information access, and exchange services for such access to interexchange carriers and information service providers in accordance with the same equal access and nondiscriminatory interconnection restrictions and obligations (including receipt of compensation) that apply to such carrier on the date immediately preceding February 8, 1996 under any court order, consent decree, or regulation, order, or policy of the Commission, until such restrictions and obligations are explicitly superseded by regulations prescribed by the Commission after February 8, 1996. During the period beginning on February 8, 1996 and until such restrictions and obligations are so superseded, such restrictions and obligations shall be enforceable in the same manner as regulations of the Commission.

(h) "Incumbent local exchange carrier" defined

(1) Definition

For purposes of this section, the term "incumbent local exchange carrier" means, with respect to an area, the local exchange carrier that--

(A) on February 8, 1996, provided telephone exchange service in such area; and

(B)(i) on February 8, 1996, was deemed to be a member of the exchange carrier association pursuant to section 69.601(b) of the Commission's regulations (47 C.F.R. 69.601(b)); or

(ii) is a person or entity that, on or after February 8, 1996, became a successor or assign of a member described in clause (i).

(2) Treatment of comparable carriers as incumbents

The Commission may, by rule, provide for the treatment of a local exchange carrier (or class or category thereof) as an incumbent local exchange carrier for purposes of this section if--

(A) such carrier occupies a position in the market for telephone exchange service within an area that is comparable to the position occupied by a carrier described in paragraph (1);

(B) such carrier has substantially replaced an incumbent local exchange carrier described in paragraph (1); and

(C) such treatment is consistent with the public interest, convenience, and necessity and the purposes of this section.

(i) Savings provision

Nothing in this section shall be construed to limit or otherwise affect the Commission's authority under section 201 of this title.

CREDIT(S)

(June 19, 1934, c. 652, Title II, § 251, as added Pub.L. 104-104, Title I, § 101(a), Feb. 8, 1996, 110 Stat. 61; Pub.L. 106-81, § 3(a), Oct. 26, 1999, 113 Stat. 1287.)

Notes of Decisions (238)

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Title 47. Telecommunications (Refs & Annos)
Chapter 5. Wire or Radio Communication (Refs & Annos)
Subchapter II. Common Carriers (Refs & Annos)
Part II. Development of Competitive Markets (Refs & Annos)

47 U.S.C.A. § 252

§ 252. Procedures for negotiation, arbitration, and approval of agreements

Effective: February 8, 1996

Currentness

(a) Agreements arrived at through negotiation

(1) Voluntary negotiations

Upon receiving a request for interconnection, services, or network elements pursuant to section 251 of this title, an incumbent local exchange carrier may negotiate and enter into a binding agreement with the requesting telecommunications carrier or carriers without regard to the standards set forth in subsections (b) and (c) of section 251 of this title. The agreement shall include a detailed schedule of itemized charges for interconnection and each service or network element included in the agreement. The agreement, including any interconnection agreement negotiated before February 8, 1996, shall be submitted to the State commission under subsection (e) of this section.

(2) Mediation

Any party negotiating an agreement under this section may, at any point in the negotiation, ask a State commission to participate in the negotiation and to mediate any differences arising in the course of the negotiation.

(b) Agreements arrived at through compulsory arbitration

(1) Arbitration

During the period from the 135th to the 160th day (inclusive) after the date on which an incumbent local exchange carrier receives a request for negotiation under this section, the carrier or any other party to the negotiation may petition a State commission to arbitrate any open issues.

(2) Duty of petitioner

(A) A party that petitions a State commission under paragraph (1) shall, at the same time as it submits the petition, provide the State commission all relevant documentation concerning--

(i) the unresolved issues;

(ii) the position of each of the parties with respect to those issues; and

(iii) any other issue discussed and resolved by the parties.

(B) A party petitioning a State commission under paragraph (1) shall provide a copy of the petition and any documentation to the other party or parties not later than the day on which the State commission receives the petition.

(3) Opportunity to respond

A non-petitioning party to a negotiation under this section may respond to the other party's petition and provide such additional information as it wishes within 25 days after the State commission receives the petition.

(4) Action by State commission

(A) The State commission shall limit its consideration of any petition under paragraph (1) (and any response thereto) to the issues set forth in the petition and in the response, if any, filed under paragraph (3).

(B) The State commission may require the petitioning party and the responding party to provide such information as may be necessary for the State commission to reach a decision on the unresolved issues. If any party refuses or fails unreasonably to respond on a timely basis to any reasonable request from the State commission, then the State commission may proceed on the basis of the best information available to it from whatever source derived.

(C) The State commission shall resolve each issue set forth in the petition and the response, if any, by imposing appropriate conditions as required to implement subsection (c) of this section upon the parties to the agreement, and shall conclude the resolution of any unresolved issues not later than 9 months after the date on which the local exchange carrier received the request under this section.

(5) Refusal to negotiate

The refusal of any other party to the negotiation to participate further in the negotiations, to cooperate with the State commission in carrying out its function as an arbitrator, or to continue to negotiate in good faith in the presence, or with the assistance, of the State commission shall be considered a failure to negotiate in good faith.

(c) Standards for arbitration

In resolving by arbitration under subsection (b) of this section any open issues and imposing conditions upon the parties to the agreement, a State commission shall--

(1) ensure that such resolution and conditions meet the requirements of section 251 of this title, including the regulations prescribed by the Commission pursuant to section 251 of this title;

(2) establish any rates for interconnection, services, or network elements according to subsection (d) of this section; and

(3) provide a schedule for implementation of the terms and conditions by the parties to the agreement.

(d) Pricing standards

(1) Interconnection and network element charges

Determinations by a State commission of the just and reasonable rate for the interconnection of facilities and equipment for purposes of subsection (c)(2) of section 251 of this title, and the just and reasonable rate for network elements for purposes of subsection (c)(3) of such section--

(A) shall be--

(i) based on the cost (determined without reference to a rate-of-return or other rate-based proceeding) of providing the interconnection or network element (whichever is applicable), and

(ii) nondiscriminatory, and

(B) may include a reasonable profit.

(2) Charges for transport and termination of traffic

(A) In general

For the purposes of compliance by an incumbent local exchange carrier with section 251(b)(5) of this title, a State commission shall not consider the terms and conditions for reciprocal compensation to be just and reasonable unless--

(i) such terms and conditions provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier; and

(ii) such terms and conditions determine such costs on the basis of a reasonable approximation of the additional costs of terminating such calls.

(B) Rules of construction

This paragraph shall not be construed--

(i) to preclude arrangements that afford the mutual recovery of costs through the offsetting of reciprocal obligations, including arrangements that waive mutual recovery (such as bill-and-keep arrangements); or

(ii) to authorize the Commission or any State commission to engage in any rate regulation proceeding to establish with particularity the additional costs of transporting or terminating calls, or to require carriers to maintain records with respect to the additional costs of such calls.

(3) Wholesale prices for telecommunications services

For the purposes of section 251(c)(4) of this title, a State commission shall determine wholesale rates on the basis of retail rates charged to subscribers for the telecommunications service requested, excluding the portion thereof attributable to any marketing, billing, collection, and other costs that will be avoided by the local exchange carrier.

(e) Approval by State commission

(1) Approval required

Any interconnection agreement adopted by negotiation or arbitration shall be submitted for approval to the State commission. A State commission to which an agreement is submitted shall approve or reject the agreement, with written findings as to any deficiencies.

(2) Grounds for rejection

The State commission may only reject

(A) an agreement (or any portion thereof) adopted by negotiation under subsection (a) of this section if it finds that--

(i) the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement; or

(ii) the implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity; or

(B) an agreement (or any portion thereof) adopted by arbitration under subsection (b) of this section if it finds that the agreement does not meet the requirements of section 251 of this title, including the regulations prescribed by the Commission pursuant to section 251 of this title, or the standards set forth in subsection (d) of this section.

(3) Preservation of authority

Notwithstanding paragraph (2), but subject to section 253 of this title, nothing in this section shall prohibit a State commission from establishing or enforcing other requirements of State law in its review of an agreement, including requiring compliance with intrastate telecommunications service quality standards or requirements.

(4) Schedule for decision

If the State commission does not act to approve or reject the agreement within 90 days after submission by the parties of an agreement adopted by negotiation under subsection (a) of this section, or within 30 days after submission by the parties of an agreement adopted by arbitration under subsection (b) of this section, the agreement shall be deemed approved. No State court shall have jurisdiction to review the action of a State commission in approving or rejecting an agreement under this section.

(5) Commission to act if State will not act

If a State commission fails to act to carry out its responsibility under this section in any proceeding or other matter under this section, then the Commission shall issue an order preempting the State commission's jurisdiction of that proceeding or matter within 90 days after being notified (or taking notice) of such failure, and shall assume the responsibility of the State commission under this section with respect to the proceeding or matter and act for the State commission.

(6) Review of State commission actions

In a case in which a State fails to act as described in paragraph (5), the proceeding by the Commission under such paragraph and any judicial review of the Commission's actions shall be the exclusive remedies for a State commission's failure to act. In any case in which a State commission makes a determination under this section, any party aggrieved by such determination may bring an action in an appropriate Federal district court to determine whether the agreement or statement meets the requirements of section 251 of this title and this section.

(f) Statements of generally available terms

(1) In general

A Bell operating company may prepare and file with a State commission a statement of the terms and conditions that such company generally offers within that State to comply with the requirements of section 251 of this title and the regulations thereunder and the standards applicable under this section.

(2) State commission review

A State commission may not approve such statement unless such statement complies with subsection (d) of this section and section 251 of this title and the regulations thereunder. Except as provided in section 253 of this title, nothing in this section shall prohibit a State commission from establishing or enforcing other requirements of State law in its review of such statement, including requiring compliance with intrastate telecommunications service quality standards or requirements.

(3) Schedule for review

The State commission to which a statement is submitted shall, not later than 60 days after the date of such submission--

(A) complete the review of such statement under paragraph (2) (including any reconsideration thereof), unless the

submitting carrier agrees to an extension of the period for such review; or

(B) permit such statement to take effect.

(4) Authority to continue review

Paragraph (3) shall not preclude the State commission from continuing to review a statement that has been permitted to take effect under subparagraph (B) of such paragraph or from approving or disapproving such statement under paragraph (2).

(5) Duty to negotiate not affected

The submission or approval of a statement under this subsection shall not relieve a Bell operating company of its duty to negotiate the terms and conditions of an agreement under section 251 of this title.

(g) Consolidation of State proceedings

Where not inconsistent with the requirements of this chapter, a State commission may, to the extent practical, consolidate proceedings under sections 214(e), 251(f), 253 of this title, and this section in order to reduce administrative burdens on telecommunications carriers, other parties to the proceedings, and the State commission in carrying out its responsibilities under this chapter.

(h) Filing required

A State commission shall make a copy of each agreement approved under subsection (e) of this section and each statement approved under subsection (f) of this section available for public inspection and copying within 10 days after the agreement or statement is approved. The State commission may charge a reasonable and nondiscriminatory fee to the parties to the agreement or to the party filing the statement to cover the costs of approving and filing such agreement or statement.

(i) Availability to other telecommunications carriers

A local exchange carrier shall make available any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement.

(j) “Incumbent local exchange carrier” defined

For purposes of this section, the term "incumbent local exchange carrier" has the meaning provided in section 251(h) of this title.

CREDIT(S)

(June 19, 1934, c. 652, Title II, § 252, as added Pub.L. 104-104, Title I, § 101(a), Feb. 8, 1996, 110 Stat. 66.)

Notes of Decisions (155)

47 U.S.C.A. § 252, 47 USCA § 252
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End of Document

United States Code Annotated
Title 47. Telecommunications (Refs & Annos)
Chapter 5. Wire or Radio Communication (Refs & Annos)
Subchapter III. Special Provisions Relating to Radio (Refs & Annos)
Part I. General Provisions

47 U.S.C.A. § 332

§ 332. Mobile services

Effective: February 8, 1996

Currentness

(a) Factors which Commission must consider

In taking actions to manage the spectrum to be made available for use by the private mobile services, the Commission shall consider, consistent with section 151 of this title, whether such actions will--

(1) promote the safety of life and property;

(2) improve the efficiency of spectrum use and reduce the regulatory burden upon spectrum users, based upon sound engineering principles, user operational requirements, and marketplace demands;

(3) encourage competition and provide services to the largest feasible number of users; or

(4) increase interservice sharing opportunities between private mobile services and other services.

(b) Advisory coordinating committees

(1) The Commission, in coordinating the assignment of frequencies to stations in the private mobile services and in the fixed services (as defined by the Commission by rule), shall have authority to utilize assistance furnished by advisory coordinating committees consisting of individuals who are not officers or employees of the Federal Government.

(2) The authority of the Commission established in this subsection shall not be subject to or affected by the provisions of part

III of Title 5 or section 1342 of Title 31.

(3) Any person who provides assistance to the Commission under this subsection shall not be considered, by reason of having provided such assistance, a Federal employee.

(4) Any advisory coordinating committee which furnishes assistance to the Commission under this subsection shall not be subject to the provisions of the Federal Advisory Committee Act.

(c) Regulatory treatment of mobile services

(1) Common carrier treatment of commercial mobile services

(A) A person engaged in the provision of a service that is a commercial mobile service shall, insofar as such person is so engaged, be treated as a common carrier for purposes of this chapter, except for such provisions of subchapter II of this chapter as the Commission may specify by regulation as inapplicable to that service or person. In prescribing or amending any such regulation, the Commission may not specify any provision of section 201, 202, or 208 of this title, and may specify any other provision only if the Commission determines that--

(i) enforcement of such provision is not necessary in order to ensure that the charges, practices, classifications, or regulations for or in connection with that service are just and reasonable and are not unjustly or unreasonably discriminatory;

(ii) enforcement of such provision is not necessary for the protection of consumers; and

(iii) specifying such provision is consistent with the public interest.

(B) Upon reasonable request of any person providing commercial mobile service, the Commission shall order a common carrier to establish physical connections with such service pursuant to the provisions of section 201 of this title. Except to the extent that the Commission is required to respond to such a request, this subparagraph shall not be construed as a limitation or expansion of the Commission's authority to order interconnection pursuant to this chapter.

(C) The Commission shall review competitive market conditions with respect to commercial mobile services and shall include in its annual report an analysis of those conditions. Such analysis shall include an identification of the number of competitors in various commercial mobile services, an analysis of whether or not there is effective competition, an analysis of whether any of such competitors have a dominant share of the market for such services, and a statement of whether additional providers or classes of providers in those services would be likely to enhance competition. As a part of making a

determination with respect to the public interest under subparagraph (A)(iii), the Commission shall consider whether the proposed regulation (or amendment thereof) will promote competitive market conditions, including the extent to which such regulation (or amendment) will enhance competition among providers of commercial mobile services. If the Commission determines that such regulation (or amendment) will promote competition among providers of commercial mobile services, such determination may be the basis for a Commission finding that such regulation (or amendment) is in the public interest.

(D) The Commission shall, not later than 180 days after August 10, 1993, complete a rulemaking required to implement this paragraph with respect to the licensing of personal communications services, including making any determinations required by subparagraph (C).

(2) Non-common carrier treatment of private mobile services

A person engaged in the provision of a service that is a private mobile service shall not, insofar as such person is so engaged, be treated as a common carrier for any purpose under this chapter. A common carrier (other than a person that was treated as a provider of a private land mobile service prior to August 10, 1993) shall not provide any dispatch service on any frequency allocated for common carrier service, except to the extent such dispatch service is provided on stations licensed in the domestic public land mobile radio service before January 1, 1982. The Commission may by regulation terminate, in whole or in part, the prohibition contained in the preceding sentence if the Commission determines that such termination will serve the public interest.

(3) State preemption

(A) Notwithstanding sections 152(b) and 221(b) of this title, no State or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service or any private mobile service, except that this paragraph shall not prohibit a State from regulating the other terms and conditions of commercial mobile services. Nothing in this subparagraph shall exempt providers of commercial mobile services (where such services are a substitute for land line telephone exchange service for a substantial portion of the communications within such State) from requirements imposed by a State commission on all providers of telecommunications services necessary to ensure the universal availability of telecommunications service at affordable rates. Notwithstanding the first sentence of this subparagraph, a State may petition the Commission for authority to regulate the rates for any commercial mobile service and the Commission shall grant such petition if such State demonstrates that--

(i) market conditions with respect to such services fail to protect subscribers adequately from unjust and unreasonable rates or rates that are unjustly or unreasonably discriminatory; or

(ii) such market conditions exist and such service is a replacement for land line telephone exchange service for a substantial portion of the telephone land line exchange service within such State.

The Commission shall provide reasonable opportunity for public comment in response to such petition, and shall, within 9 months after the date of its submission, grant or deny such petition. If the Commission grants such petition, the

Commission shall authorize the State to exercise under State law such authority over rates, for such periods of time, as the Commission deems necessary to ensure that such rates are just and reasonable and not unjustly or unreasonably discriminatory.

(B) If a State has in effect on June 1, 1993, any regulation concerning the rates for any commercial mobile service offered in such State on such date, such State may, no later than 1 year after August 10, 1993, petition the Commission requesting that the State be authorized to continue exercising authority over such rates. If a State files such a petition, the State's existing regulation shall, notwithstanding subparagraph (A), remain in effect until the Commission completes all action (including any reconsideration) on such petition. The Commission shall review such petition in accordance with the procedures established in such subparagraph, shall complete all action (including any reconsideration) within 12 months after such petition is filed, and shall grant such petition if the State satisfies the showing required under subparagraph (A)(i) or (A)(ii). If the Commission grants such petition, the Commission shall authorize the State to exercise under State law such authority over rates, for such period of time, as the Commission deems necessary to ensure that such rates are just and reasonable and not unjustly or unreasonably discriminatory. After a reasonable period of time, as determined by the Commission, has elapsed from the issuance of an order under subparagraph (A) or this subparagraph, any interested party may petition the Commission for an order that the exercise of authority by a State pursuant to such subparagraph is no longer necessary to ensure that the rates for commercial mobile services are just and reasonable and not unjustly or unreasonably discriminatory. The Commission shall provide reasonable opportunity for public comment in response to such petition, and shall, within 9 months after the date of its submission, grant or deny such petition in whole or in part.

(4) Regulatory treatment of communications satellite corporation

Nothing in this subsection shall be construed to alter or affect the regulatory treatment required by title IV of the Communications Satellite Act of 1962 [47 U.S.C.A. § 741 et seq.] of the corporation authorized by title III of such Act [47 U.S.C.A. § 731 et seq.].

(5) Space segment capacity

Nothing in this section shall prohibit the Commission from continuing to determine whether the provision of space segment capacity by satellite systems to providers of commercial mobile services shall be treated as common carriage.

(6) Foreign ownership

The Commission, upon a petition for waiver filed within 6 months after August 10, 1993, may waive the application of section 310(b) of this title to any foreign ownership that lawfully existed before May 24, 1993, of any provider of a private land mobile service that will be treated as a common carrier as a result of the enactment of the Omnibus Budget Reconciliation Act of 1993, but only upon the following conditions:

(A) The extent of foreign ownership interest shall not be increased above the extent which existed on May 24, 1993.

(B) Such waiver shall not permit the subsequent transfer of ownership to any other person in violation of section 310(b) of this title.

(7) Preservation of local zoning authority

(A) General authority

Except as provided in this paragraph, nothing in this chapter shall limit or affect the authority of a State or local government or instrumentality thereof over decisions regarding the placement, construction, and modification of personal wireless service facilities.

(B) Limitations

(i) The regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government or instrumentality thereof--

(I) shall not unreasonably discriminate among providers of functionally equivalent services; and

(II) shall not prohibit or have the effect of prohibiting the provision of personal wireless services.

(ii) A State or local government or instrumentality thereof shall act on any request for authorization to place, construct, or modify personal wireless service facilities within a reasonable period of time after the request is duly filed with such government or instrumentality, taking into account the nature and scope of such request.

(iii) Any decision by a State or local government or instrumentality thereof to deny a request to place, construct, or modify personal wireless service facilities shall be in writing and supported by substantial evidence contained in a written record.

(iv) No State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission's regulations concerning such emissions.

(v) Any person adversely affected by any final action or failure to act by a State or local government or any instrumentality thereof that is inconsistent with this subparagraph may, within 30 days after such action or failure to act, commence an action in any court of competent jurisdiction. The court shall hear and decide such action on an expedited

basis. Any person adversely affected by an act or failure to act by a State or local government or any instrumentality thereof that is inconsistent with clause (iv) may petition the Commission for relief.

(C) Definitions

For purposes of this paragraph--

(i) the term "personal wireless services" means commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services;

(ii) the term "personal wireless service facilities" means facilities for the provision of personal wireless services; and

(iii) the term "unlicensed wireless service" means the offering of telecommunications services using duly authorized devices which do not require individual licenses, but does not mean the provision of direct-to-home satellite services (as defined in section 303(v) of this title).

(8) Mobile services access

A person engaged in the provision of commercial mobile services, insofar as such person is so engaged, shall not be required to provide equal access to common carriers for the provision of telephone toll services. If the Commission determines that subscribers to such services are denied access to the provider of telephone toll services of the subscribers' choice, and that such denial is contrary to the public interest, convenience, and necessity, then the Commission shall prescribe regulations to afford subscribers unblocked access to the provider of telephone toll services of the subscribers' choice through the use of a carrier identification code assigned to such provider or other mechanism. The requirements for unblocking shall not apply to mobile satellite services unless the Commission finds it to be in the public interest to apply such requirements to such services.

(d) Definitions

For purposes of this section--

(1) the term "commercial mobile service" means any mobile service (as defined in section 153 of this title) that is provided for profit and makes interconnected service available (A) to the public or (B) to such classes of eligible users as to be effectively available to a substantial portion of the public, as specified by regulation by the Commission;

(2) the term "interconnected service" means service that is interconnected with the public switched network (as such terms are defined by regulation by the Commission) or service for which a request for interconnection is pending pursuant to

subsection (c)(1)(B) of this section; and

(3) the term "private mobile service" means any mobile service (as defined in section 153 of this title) that is not a commercial mobile service or the functional equivalent of a commercial mobile service, as specified by regulation by the Commission.

CREDIT(S)

(June 19, 1934, c. 652, Title III, § 332, formerly § 331, as added Pub.L. 97-259, Title I, § 120(a), Sept. 13, 1982, 96 Stat. 1096; renumbered § 332, Pub.L. 102-385, § 25(b), Oct. 5, 1992, 106 Stat. 1502; amended Pub.L. 103-66, Title VI, § 6002(b)(2)(A), Aug. 10, 1993, 107 Stat. 393; Pub.L. 104-104, § 3(d)(2), Title VII, §§ 704(a), 705, Feb. 8, 1996, 110 Stat. 61, 151, 153.)

Notes of Decisions (331)

47 U.S.C.A. § 332, 47 USCA § 332
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End of Document

United States Code Annotated
Title 47. Telecommunications (Refs & Annos)
Chapter 13. Public Safety Communications and Electromagnetic Spectrum Auctions

47 U.S.C.A. § 1401

§ 1401. Definitions

Effective: February 22, 2012
Currentness

In this chapter:

(1) 700 MHz band

The term “700 MHz band” means the portion of the electromagnetic spectrum between the frequencies from 698 megahertz to 806 megahertz.

(2) 700 MHz D block spectrum

The term “700 MHz D block spectrum” means the portion of the electromagnetic spectrum between the frequencies from 758 megahertz to 763 megahertz and between the frequencies from 788 megahertz to 793 megahertz.

(3) Appropriate committees of Congress

Except as otherwise specifically provided, the term “appropriate committees of Congress” means--

(A) the Committee on Commerce, Science, and Transportation of the Senate; and

(B) the Committee on Energy and Commerce of the House of Representatives.

(4) Assistant Secretary

The term “Assistant Secretary” means the Assistant Secretary of Commerce for Communications and Information.

(5) Board

The term “Board” means the Board of the First Responder Network Authority established under section 1424(b) of this title.

(6) Broadcast television licensee

The term “broadcast television licensee” means the licensee of--

(A) a full-power television station; or

(B) a low-power television station that has been accorded primary status as a Class A television licensee under section 73.6001(a) of title 47, Code of Federal Regulations.

(7) Broadcast television spectrum

The term "broadcast television spectrum" means the portions of the electromagnetic spectrum between the frequencies from 54 megahertz to 72 megahertz, from 76 megahertz to 88 megahertz, from 174 megahertz to 216 megahertz, and from 470 megahertz to 698 megahertz.

(8) Commercial mobile data service

The term "commercial mobile data service" means any mobile service (as defined in section 153 of this title) that is--

(A) a data service;

(B) provided for profit; and

(C) available to the public or such classes of eligible users as to be effectively available to a substantial portion of the public, as specified by regulation by the Commission.

(9) Commercial mobile service

The term "commercial mobile service" has the meaning given such term in section 332 of this title.

(10) Commercial standards

The term "commercial standards" means the technical standards followed by the commercial mobile service and commercial mobile data service industries for network, device, and Internet Protocol connectivity. Such term includes standards developed by the Third Generation Partnership Project (3GPP), the Institute of Electrical and Electronics Engineers (IEEE), the Alliance for Telecommunications Industry Solutions (ATIS), the Internet Engineering Task Force (IETF), and the International Telecommunication Union (ITU).

(11) Commission

The term "Commission" means the Federal Communications Commission.

(12) Core network

The term “core network” means the core network described in section 1422(b)(1) of this title.

(13) Emergency call

The term “emergency call” means any real-time communication with a public safety answering point or other emergency management or response agency, including--

(A) through voice, text, or video and related data; and

(B) nonhuman-initiated automatic event alerts, such as alarms, telematics, or sensor data, which may also include real-time voice, text, or video communications.

(14) Existing public safety broadband spectrum

The term “existing public safety broadband spectrum” means the portion of the electromagnetic spectrum between the frequencies--

(A) from 763 megahertz to 768 megahertz;

(B) from 793 megahertz to 798 megahertz;

(C) from 768 megahertz to 769 megahertz; and

(D) from 798 megahertz to 799 megahertz.

(15) First Responder Network Authority

The term “First Responder Network Authority” means the First Responder Network Authority established under section 1424 of this title.

(16) Forward auction

The term “forward auction” means the portion of an incentive auction of broadcast television spectrum under section 1452(c) of this title.

(17) Incentive auction

The term “incentive auction” means a system of competitive bidding under subparagraph (G) of section 309(j)(8) of this title, as added by section 6402.

(18) Interoperability Board

The term “Interoperability Board” means the Technical Advisory Board for First Responder Interoperability established under section 1423 of this title.

(19) Multichannel video programming distributor

The term “multichannel video programming distributor” has the meaning given such term in section 522 of this title.

(20) Narrowband spectrum

The term “narrowband spectrum” means the portion of the electromagnetic spectrum between the frequencies from 769 megahertz to 775 megahertz and between the frequencies from 799 megahertz to 805 megahertz.

(21) Nationwide public safety broadband network

The term “nationwide public safety broadband network” means the nationwide, interoperable public safety broadband network described in section 1422 of this title.

(22) Next Generation 9-1-1 services

The term “Next Generation 9-1-1 services” means an IP-based system comprised of hardware, software, data, and operational policies and procedures that--

(A) provides standardized interfaces from emergency call and message services to support emergency communications;

(B) processes all types of emergency calls, including voice, text, data, and multimedia information;

(C) acquires and integrates additional emergency call data useful to call routing and handling;

(D) delivers the emergency calls, messages, and data to the appropriate public safety answering point and other appropriate emergency entities;

(E) supports data or video communications needs for coordinated incident response and management; and

(F) provides broadband service to public safety answering points or other first responder entities.

(23) NIST

The term “NIST” means the National Institute of Standards and Technology.

(24) NTIA

The term “NTIA” means the National Telecommunications and Information Administration.

(25) Public safety answering point

The term “public safety answering point” has the meaning given such term in section 222 of this title.

(26) Public safety entity

The term “public safety entity” means an entity that provides public safety services.

(27) Public safety services

The term “public safety services”--

(A) has the meaning given the term in section 337(f) of this title; and

(B) includes services provided by emergency response providers, as that term is defined in section 101 of Title 6.

(28) Public Safety Trust Fund

The term “Public Safety Trust Fund” means the trust fund established under section 1457(a)(1) of this title.

(29) Radio access network

The term “radio access network” means the radio access network described in section 1422(b)(2) of this title.

(30) Reverse auction

The term “reverse auction” means the portion of an incentive auction of broadcast television spectrum under section 1452(a) of this title, in which a broadcast television licensee may submit bids stating the amount it would accept for voluntarily relinquishing some or all of its broadcast television spectrum usage rights.

(31) State

The term “State” has the meaning given such term in section 153 of this title.

(32) Ultra high frequency

The term “ultra high frequency” means, with respect to a television channel, that the channel is located in the portion of the electromagnetic spectrum between the frequencies from 470 megahertz to 698 megahertz.

(33) Very high frequency

The term “very high frequency” means, with respect to a television channel, that the channel is located in the portion of the electromagnetic spectrum between the frequencies from 54 megahertz to 72 megahertz, from 76 megahertz to 88 megahertz, or from 174 megahertz to 216 megahertz.

CREDIT(S)

(Pub.L. 112-96, Title VI, § 6001, Feb. 22, 2012, 126 Stat. 201.)

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United States Code Annotated
Title 47. Telecommunications (Refs & Annos)
Chapter 13. Public Safety Communications and Electromagnetic Spectrum Auctions

47 U.S.C.A. § 1403

§ 1403. Enforcement

Effective: February 22, 2012

Currentness

(a) In general

The Commission shall implement and enforce this chapter as if this chapter is a part of the Communications Act of 1934 (47 U.S.C. 151 et seq.). A violation of this chapter, or a regulation promulgated under this chapter, shall be considered to be a violation of the Communications Act of 1934, or a regulation promulgated under such Act, respectively.

(b) Exceptions

(1) Other agencies

Subsection (a) does not apply in the case of a provision of this chapter that is expressly required to be carried out by an agency (as defined in section 551 of Title 5) other than the Commission.

(2) NTIA regulations

The Assistant Secretary may promulgate such regulations as are necessary to implement and enforce any provision of this chapter that is expressly required to be carried out by the Assistant Secretary.

CREDIT(S)

(Pub.L. 112-96, Title VI, § 6003, Feb. 22, 2012, 126 Stat. 204.)

47 U.S.C.A. § 1403, 47 USCA § 1403
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United States Code Annotated
Title 47. Telecommunications (Refs & Annos)
Chapter 13. Public Safety Communications and Electromagnetic Spectrum Auctions
Subchapter II. Governance of Public Safety Spectrum

47 U.S.C.A. § 1426

§ 1426. Powers, duties, and responsibilities of the First Responder Network Authority

Effective: February 22, 2012

Currentness

(a) General powers

The First Responder Network Authority shall have the authority to do the following:

(1) To exercise, through the actions of its Board, all powers specifically granted by the provisions of this subchapter, and such incidental powers as shall be necessary.

(2) To hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the First Responder Network Authority considers necessary to carry out its responsibilities and duties.

(3) To obtain grants and funds from and make contracts with individuals, private companies, organizations, institutions, and Federal, State, regional, and local agencies.

(4) To accept, hold, administer, and utilize gifts, donations, and bequests of property, both real and personal, for the purposes of aiding or facilitating the work of the First Responder Network Authority.

(5) To spend funds under paragraph (3) in a manner authorized by the Board, but only for purposes that will advance or enhance public safety communications consistent with this chapter.

(6) To take such other actions as the First Responder Network Authority (through the Board) may from time to time determine necessary, appropriate, or advisable to accomplish the purposes of this chapter.

(b) Duty and responsibility to deploy and operate a nationwide public safety broadband network

(1) In general

The First Responder Network Authority shall hold the single public safety wireless license granted under section 1421 of this title and take all actions necessary to ensure the building, deployment, and operation of the nationwide public safety broadband network, in consultation with Federal, State, tribal, and local public safety entities, the Director of NIST, the Commission, and the public safety advisory committee established in section 1425(a) of this title, including by, at a minimum--

(A) ensuring nationwide standards for use and access of the network;

(B) issuing open, transparent, and competitive requests for proposals to private sector entities for the purposes of building, operating, and maintaining the network that use, without materially changing, the minimum technical requirements developed under section 1423 of this title;

(C) encouraging that such requests leverage, to the maximum extent economically desirable, existing commercial wireless infrastructure to speed deployment of the network; and

(D) managing and overseeing the implementation and execution of contracts or agreements with non-Federal entities to build, operate, and maintain the network.

(2) Requirements

In carrying out the duties and responsibilities of this subsection, including issuing requests for proposals, the First Responder Network Authority shall--

(A) ensure the safety, security, and resiliency of the network, including requirements for protecting and monitoring the network to protect against cyberattack;

(B) promote competition in the equipment market, including devices for public safety communications, by requiring that equipment for use on the network be--

(i) built to open, non-proprietary, commercially available standards;

(ii) capable of being used by any public safety entity and by multiple vendors across all public safety broadband networks operating in the 700 MHz band; and

(iii) backward-compatible with existing commercial networks to the extent that such capabilities are necessary and technically and economically reasonable;

(C) promote integration of the network with public safety answering points or their equivalent; and

(D) address special considerations for areas or regions with unique homeland security or national security needs.

(3) Rural coverage

In carrying out the duties and responsibilities of this subsection, including issuing requests for proposals, the nationwide, interoperable public safety broadband network, consistent with the license granted under section 1421 of this title, shall require deployment phases with substantial rural coverage milestones as part of each phase of the construction and deployment of the network. To the maximum extent economically desirable, such proposals shall include partnerships with existing commercial mobile providers to utilize cost-effective opportunities to speed deployment in rural areas.

(4) Execution of authority

In carrying out the duties and responsibilities of this subsection, the First Responder Network Authority may--

(A) obtain grants from and make contracts with individuals, private companies, and Federal, State, regional, and local agencies;

(B) hire or accept voluntary services of consultants, experts, advisory boards, and panels to aid the First Responder Network Authority in carrying out such duties and responsibilities;

(C) receive payment for use of--

(i) network capacity licensed to the First Responder Network Authority; and

(ii) network infrastructure constructed, owned, or operated by the First Responder Network Authority; and

(D) take such other actions as may be necessary to accomplish the purposes set forth in this subsection.

(c) Other specific duties and responsibilities

(1) Establishment of network policies

In carrying out the requirements under subsection (b), the First Responder Network Authority shall develop--

(A) requests for proposals with appropriate--

(i) timetables for construction, including by taking into consideration the time needed to build out to rural areas and the advantages offered through partnerships with existing commercial providers under paragraph (3);

(ii) coverage areas, including coverage in rural and nonurban areas;

(iii) service levels;

(iv) performance criteria; and

(v) other similar matters for the construction and deployment of such network;

(B) the technical and operational requirements of the network;

(C) practices, procedures, and standards for the management and operation of such network;

(D) terms of service for the use of such network, including billing practices; and

(E) ongoing compliance review and monitoring of the--

(i) management and operation of such network;

(ii) practices and procedures of the entities operating on and the personnel using such network; and

(iii) necessary training needs of network operators and users.

(2) State and local planning

(A) Required consultation

In developing requests for proposals and otherwise carrying out its responsibilities under this chapter, the First Responder Network Authority shall consult with regional, State, tribal, and local jurisdictions regarding the distribution and expenditure of any amounts required to carry out the policies established under paragraph (1), including with regard to the--

(i) construction of a core network and any radio access network build out;

(ii) placement of towers;

(iii) coverage areas of the network, whether at the regional, State, tribal, or local level;

(iv) adequacy of hardening, security, reliability, and resiliency requirements;

(v) assignment of priority to local users;

(vi) assignment of priority and selection of entities seeking access to or use of the nationwide public safety interoperable broadband network established under subsection (b); and

(vii) training needs of local users.

(B) Method of consultation

The consultation required under subparagraph (A) shall occur between the First Responder Network Authority and the single officer or governmental body designated under section 1442(d) of this title.

(3) Leveraging existing infrastructure

In carrying out the requirement under subsection (b), the First Responder Network Authority shall enter into agreements to utilize, to the maximum extent economically desirable, existing--

(A) commercial or other communications infrastructure; and

(B) Federal, State, tribal, or local infrastructure.

(4) Maintenance and upgrades

The First Responder Network Authority shall ensure the maintenance, operation, and improvement of the nationwide public safety broadband network, including by ensuring that the First Responder Network Authority updates and revises any policies established under paragraph (1) to take into account new and evolving technologies.

(5) Roaming agreements

The First Responder Network Authority shall negotiate and enter into, as it determines appropriate, roaming agreements with commercial network providers to allow the nationwide public safety broadband network to roam onto commercial networks and gain prioritization of public safety communications over such networks in times of an emergency.

(6) Network infrastructure and device criteria

The Director of NIST, in consultation with the First Responder Network Authority and the Commission, shall ensure the development of a list of certified devices and components meeting appropriate protocols and standards for public safety entities and commercial vendors to adhere to, if such entities or vendors seek to have access to, use of, or compatibility with the nationwide public safety broadband network.

(7) Representation before standard setting entities

The First Responder Network Authority, in consultation with the Director of NIST, the Commission, and the public safety advisory committee established under section 1425(a) of this title, shall represent the interests of public safety users of the nationwide public safety broadband network before any proceeding, negotiation, or other matter in which a standards organization, standards body, standards development organization, or any other recognized standards-setting entity addresses the development of standards relating to interoperability.

(8) Prohibition on negotiation with foreign governments

The First Responder Network Authority shall not have the authority to negotiate or enter into any agreements with a foreign government on behalf of the United States.

(d) Exemption from certain laws

Any action taken or decisions made by the First Responder Network Authority shall be exempt from the requirements of--

(1) section 3506 of Title 44 (commonly referred to as the Paperwork Reduction Act);

(2) chapter 5 of Title 5 (commonly referred to as the Administrative Procedures Act); and

(3) chapter 6 of Title 5 (commonly referred to as the Regulatory Flexibility Act).

(e) Network Construction Fund

(1) Establishment

There is established in the Treasury of the United States a fund to be known as the "Network Construction Fund".

(2) Use of Fund

Amounts deposited into the Network Construction Fund shall be used by the--

(A) First Responder Network Authority to carry out this section, except for administrative expenses; and

(B) NTIA to make grants to States under section 1442(e)(3)(C)(iii)(I) of this title.

(f) Termination of authority

The authority of the First Responder Network Authority shall terminate on the date that is 15 years after February 22, 2012.

(g) GAO report

Not later than 10 years after February 22, 2012, the Comptroller General of the United States shall submit to Congress a report on what action Congress should take regarding the 15-year sunset of authority under subsection (f).

CREDIT(S)

(Pub.L. 112-96, Title VI, § 6206, Feb. 22, 2012, 126 Stat. 211.)

Notes of Decisions (4)

47 U.S.C.A. § 1426, 47 USCA § 1426
Current through P.L. 114-9 approved 4-7-2015

End of Document

United States Code Annotated
Title 47. Telecommunications (Refs & Annos)
Chapter 13. Public Safety Communications and Electromagnetic Spectrum Auctions
Subchapter II. Governance of Public Safety Spectrum

47 U.S.C.A. § 1433

§ 1433. Provision of technical assistance

Effective: February 22, 2012

Currentness

The Commission may provide technical assistance to the First Responder Network Authority and may take any action necessary to assist the First Responder Network Authority in effectuating its duties and responsibilities under this subchapter.

CREDIT(S)

(Pub.L. 112-96, Title VI, § 6213, Feb. 22, 2012, 126 Stat. 218.)

47 U.S.C.A. § 1433, 47 USCA § 1433
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End of Document

United States Code Annotated
Title 47. Telecommunications (Refs & Annos)
Chapter 13. Public Safety Communications and Electromagnetic Spectrum Auctions
Subchapter IV. Spectrum Auction Authority

47 U.S.C.A. § 1451

§ 1451. Deadlines for auction of certain spectrum

Effective: February 22, 2012

Currentness

(a) Clearing certain Federal spectrum

(1) In general

The President shall--

(A) not later than 3 years after February 22, 2012, begin the process of withdrawing or modifying the assignment to a Federal Government station of the electromagnetic spectrum described in paragraph (2); and

(B) not later than 30 days after completing the withdrawal or modification, notify the Commission that the withdrawal or modification is complete.

(2) Spectrum described

The electromagnetic spectrum described in this paragraph is the 15 megahertz of spectrum between 1675 megahertz and 1710 megahertz identified under paragraph (3).

(3) Identification by Secretary of Commerce

Not later than 1 year after February 22, 2012, the Secretary of Commerce shall submit to the President a report identifying 15 megahertz of spectrum between 1675 megahertz and 1710 megahertz for reallocation from Federal use to non-Federal use.

(b) Reallocation and auction

(1) In general

Notwithstanding paragraph (15)(A) of section 309(j) of this title, not later than 3 years after February 22, 2012, the Commission shall, except as provided in paragraph (4)--

(A) allocate the spectrum described in paragraph (2) for commercial use; and

(B) through a system of competitive bidding under such section, grant new initial licenses for the use of such spectrum, subject to flexible-use service rules.

(2) Spectrum described

The spectrum described in this paragraph is the following:

(A) The frequencies between 1915 megahertz and 1920 megahertz.

(B) The frequencies between 1995 megahertz and 2000 megahertz.

(C) The frequencies described in subsection (a)(2).

(D) The frequencies between 2155 megahertz and 2180 megahertz.

(E) Fifteen megahertz of contiguous spectrum to be identified by the Commission.

(3) Proceeds to cover 110 percent of Federal relocation or sharing costs

Nothing in paragraph (1) shall be construed to relieve the Commission from the requirements of section 309(j)(16)(B) of this title.

(4) Determination by Commission

If the Commission determines that the band of frequencies described in paragraph (2)(A) or the band of frequencies described in paragraph (2)(B) cannot be used without causing harmful interference to commercial mobile service licensees in the frequencies between 1930 megahertz and 1995 megahertz, the Commission may not--

(A) allocate such band for commercial use under paragraph (1)(A); or

(B) grant licenses under paragraph (1)(B) for the use of such band.

(c) Omitted

CREDIT(S)

(Pub.L. 112-96, Title VI, § 6401, Feb. 22, 2012, 126 Stat. 222.)

47 U.S.C.A. § 1451, 47 USCA § 1451
Current through P.L. 114-9 approved 4-7-2015

End of Document

United States Code Annotated
Title 47. Telecommunications (Refs & Annos)
Chapter 13. Public Safety Communications and Electromagnetic Spectrum Auctions
Subchapter IV. Spectrum Auction Authority

47 U.S.C.A. § 1452

§ 1452. Special requirements for incentive auction of broadcast TV spectrum

Effective: February 22, 2012

Currentness

(a) Reverse auction to identify incentive amount

(1) In general

The Commission shall conduct a reverse auction to determine the amount of compensation that each broadcast television licensee would accept in return for voluntarily relinquishing some or all of its broadcast television spectrum usage rights in order to make spectrum available for assignment through a system of competitive bidding under subparagraph (G) of section 309(j)(8) of this title.

(2) Eligible relinquishments

A relinquishment of usage rights for purposes of paragraph (1) shall include the following:

(A) Relinquishing all usage rights with respect to a particular television channel without receiving in return any usage rights with respect to another television channel.

(B) Relinquishing all usage rights with respect to an ultra high frequency television channel in return for receiving usage rights with respect to a very high frequency television channel.

(C) Relinquishing usage rights in order to share a television channel with another licensee.

(3) Confidentiality

The Commission shall take all reasonable steps necessary to protect the confidentiality of Commission-held data of a licensee participating in the reverse auction under paragraph (1), including withholding the identity of such licensee until the reassignments and reallocations (if any) under subsection (b)(1)(B) become effective, as described in subsection (f)(2).

(4) Protection of carriage rights of licensees sharing a channel

A broadcast television station that voluntarily relinquishes spectrum usage rights under this subsection in order to share a television channel and that possessed carriage rights under section 338, 534, or 535 of this title on November 30, 2010, shall have, at its shared location, the carriage rights under such section that would apply to such station at such location if it were not sharing a channel.

(b) Reorganization of broadcast TV spectrum

(1) In general

For purposes of making available spectrum to carry out the forward auction under subsection (c)(1), the Commission--

(A) shall evaluate the broadcast television spectrum (including spectrum made available through the reverse auction under subsection (a)(1)); and

(B) may, subject to international coordination along the border with Mexico and Canada--

(i) make such reassignments of television channels as the Commission considers appropriate; and

(ii) reallocate such portions of such spectrum as the Commission determines are available for reallocation.

(2) Factors for consideration

In making any reassignments or reallocations under paragraph (1)(B), the Commission shall make all reasonable efforts to preserve, as of February 22, 2012, the coverage area and population served of each broadcast television licensee, as determined using the methodology described in OET Bulletin 69 of the Office of Engineering and Technology of the Commission.

(3) No involuntary relocation from UHF to VHF

In making any reassignments under paragraph (1)(B)(i), the Commission may not involuntarily reassign a broadcast television licensee--

(A) from an ultra high frequency television channel to a very high frequency television channel; or

(B) from a television channel between the frequencies from 174 megahertz to 216 megahertz to a television channel between the frequencies from 54 megahertz to 88 megahertz.

(4) Payment of relocation costs

(A) In general

Except as provided in subparagraph (B), from amounts made available under subsection (d)(2), the Commission shall reimburse costs reasonably incurred by--

(i) a broadcast television licensee that was reassigned under paragraph (1)(B)(i) from one ultra high frequency television channel to a different ultra high frequency television channel, from one very high frequency television channel to a different very high frequency television channel, or, in accordance with subsection (g)(1)(B), from a very high frequency television channel to an ultra high frequency television channel, in order for the licensee to relocate its television service from one channel to the other;

(ii) a multichannel video programming distributor in order to continue to carry the signal of a broadcast television licensee that--

(I) is described in clause (i);

(II) voluntarily relinquishes spectrum usage rights under subsection (a) with respect to an ultra high frequency television channel in return for receiving usage rights with respect to a very high frequency television channel; or

(III) voluntarily relinquishes spectrum usage rights under subsection (a) to share a television channel with another licensee; or

(iii) a channel 37 incumbent user, in order to relocate to other suitable spectrum, provided that all such users can be

relocated and that the total relocation costs of such users do not exceed $300,000,000. For the purpose of this section, the spectrum made available through relocation of channel 37 incumbent users shall be deemed as spectrum reclaimed through a reverse auction under subsection (a).

(B) Regulatory relief

In lieu of reimbursement for relocation costs under subparagraph (A), a broadcast television licensee may accept, and the Commission may grant as it considers appropriate, a waiver of the service rules of the Commission to permit the licensee, subject to interference protections, to make flexible use of the spectrum assigned to the licensee to provide services other than broadcast television services. Such waiver shall only remain in effect while the licensee provides at least 1 broadcast television program stream on such spectrum at no charge to the public.

(C) Limitation

The Commission may not make reimbursements under subparagraph (A) for lost revenues.

(D) Deadline

The Commission shall make all reimbursements required by subparagraph (A) not later than the date that is 3 years after the completion of the forward auction under subsection (c)(1).

(5) Low-power television usage rights

Nothing in this subsection shall be construed to alter the spectrum usage rights of low-power television stations.

(c) Forward auction

(1) Auction required

The Commission shall conduct a forward auction in which--

(A) the Commission assigns licenses for the use of the spectrum that the Commission reallocates under subsection (b)(1)(B)(ii); and

(B) the amount of the proceeds that the Commission shares under clause (i) of section 309(j)(8)(G) of this title with each

licensee whose bid the Commission accepts in the reverse auction under subsection (a)(1) is not less than the amount of such bid.

(2) Minimum proceeds

(A) In general

If the amount of the proceeds from the forward auction under paragraph (1) is not greater than the sum described in subparagraph (B), no licenses shall be assigned through such forward auction, no reassignments or reallocations under subsection (b)(1)(B) shall become effective, and the Commission may not revoke any spectrum usage rights by reason of a bid that the Commission accepts in the reverse auction under subsection (a)(1).

(B) Sum described

The sum described in this subparagraph is the sum of--

(i) the total amount of compensation that the Commission must pay successful bidders in the reverse auction under subsection (a)(1);

(ii) the costs of conducting such forward auction that the salaries and expenses account of the Commission is required to retain under section 309(j)(8)(B) of this title; and

(iii) the estimated costs for which the Commission is required to make reimbursements under subsection (b)(4)(A).

(C) Administrative costs

The amount of the proceeds from the forward auction under paragraph (1) that the salaries and expenses account of the Commission is required to retain under section 309(j)(8)(B) of this title shall be sufficient to cover the costs incurred by the Commission in conducting the reverse auction under subsection (a)(1), conducting the evaluation of the broadcast television spectrum under subparagraph (A) of subsection (b)(1), and making any reassignments or reallocations under subparagraph (B) of such subsection, in addition to the costs incurred by the Commission in conducting such forward auction.

(3) Factor for consideration

In conducting the forward auction under paragraph (1), the Commission shall consider assigning licenses that cover

geographic areas of a variety of different sizes.

(d) TV Broadcaster Relocation Fund

(1) Establishment

There is established in the Treasury of the United States a fund to be known as the TV Broadcaster Relocation Fund.

(2) Payment of relocation costs

Any amounts borrowed under paragraph (3)(A) and any amounts in the TV Broadcaster Relocation Fund that are not necessary for reimbursement of the general fund of the Treasury for such borrowed amounts shall be available to the Commission to make the payments required by subsection (b)(4)(A).

(3) Borrowing authority

(A) In general

Beginning on the date when any reassignments or reallocations under subsection (b)(1)(B) become effective, as provided in subsection (f)(2), and ending when $1,000,000,000 has been deposited in the TV Broadcaster Relocation Fund, the Commission may borrow from the Treasury of the United States an amount not to exceed $1,000,000,000 to use toward the payments required by subsection (b)(4)(A).

(B) Reimbursement

The Commission shall reimburse the general fund of the Treasury, without interest, for any amounts borrowed under subparagraph (A) as funds are deposited into the TV Broadcaster Relocation Fund.

(4) Transfer of unused funds

If any amounts remain in the TV Broadcaster Relocation Fund after the date that is 3 years after the completion of the forward auction under subsection (c)(1), the Secretary of the Treasury shall--

(A) prior to the end of fiscal year 2022, transfer such amounts to the Public Safety Trust Fund established by section 1457(a)(1) of this title; and

(B) after the end of fiscal year 2022, transfer such amounts to the general fund of the Treasury, where such amounts shall be dedicated for the sole purpose of deficit reduction.

(e) Numerical limitation on auctions and reorganization

The Commission may not complete more than one reverse auction under subsection (a)(1) or more than one reorganization of the broadcast television spectrum under subsection (b).

(f) Timing

(1) Contemporaneous auctions and reorganization permitted

The Commission may conduct the reverse auction under subsection (a)(1), any reassignments or reallocations under subsection (b)(1)(B), and the forward auction under subsection (c)(1) on a contemporaneous basis.

(2) Effectiveness of reassignments and reallocations

Notwithstanding paragraph (1), no reassignments or reallocations under subsection (b)(1)(B) shall become effective until the completion of the reverse auction under subsection (a)(1) and the forward auction under subsection (c)(1), and, to the extent practicable, all such reassignments and reallocations shall become effective simultaneously.

(3) Deadline

The Commission may not conduct the reverse auction under subsection (a)(1) or the forward auction under subsection (c)(1) after the end of fiscal year 2022.

(4) Limit on discretion regarding auction timing

Section 309(j)(15)(A) of this title shall not apply in the case of an auction conducted under this section.

(g) Limitation on reorganization authority

(1) In general

During the period described in paragraph (2), the Commission may not--

(A) involuntarily modify the spectrum usage rights of a broadcast television licensee or reassign such a licensee to another television channel except--

(i) in accordance with this section; or

(ii) in the case of a violation by such licensee of the terms of its license or a specific provision of a statute administered by the Commission, or a regulation of the Commission promulgated under any such provision; or

(B) reassign a broadcast television licensee from a very high frequency television channel to an ultra high frequency television channel, unless--

(i) such a reassignment will not decrease the total amount of ultra high frequency spectrum made available for reallocation under this section; or

(ii) a request from such licensee for the reassignment was pending at the Commission on May 31, 2011.

(2) Period described

The period described in this paragraph is the period beginning on February 22, 2012, and ending on the earliest of--

(A) the first date when the reverse auction under subsection (a)(1), the reassignments and reallocations (if any) under subsection (b)(1)(B), and the forward auction under subsection (c)(1) have been completed;

(B) the date of a determination by the Commission that the amount of the proceeds from the forward auction under subsection (c)(1) is not greater than the sum described in subsection (c)(2)(B); or

(C) September 30, 2022.

(h) Protest right inapplicable

The right of a licensee to protest a proposed order of modification of its license under section 316 of this title shall not apply in the case of a modification made under this section.

(i) Commission authority

Nothing in subsection (b) shall be construed to--

(1) expand or contract the authority of the Commission, except as otherwise expressly provided; or

(2) prevent the implementation of the Commission's "White Spaces" Second Report and Order and Memorandum Opinion and Order (FCC 08-260, adopted November 4, 2008) in the spectrum that remains allocated for broadcast television use after the reorganization required by such subsection.

CREDIT(S)

(Pub.L. 112-96, Title VI, § 6403, Feb. 22, 2012, 126 Stat. 225.)

47 U.S.C.A. § 1452, 47 USCA § 1452
Current through P.L. 114-9 approved 4-7-2015

End of Document

United States Code Annotated
Title 47. Telecommunications (Refs & Annos)
Chapter 13. Public Safety Communications and Electromagnetic Spectrum Auctions
Subchapter IV. Spectrum Auction Authority

47 U.S.C.A. § 1455

§ 1455. Wireless facilities deployment

Effective: February 22, 2012

Currentness

(a) Facility modifications

(1) In general

Notwithstanding section 704 of the Telecommunications Act of 1996 (Public Law 104-104) or any other provision of law, a State or local government may not deny, and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station.

(2) Eligible facilities request

For purposes of this subsection, the term "eligible facilities request" means any request for modification of an existing wireless tower or base station that involves--

(A) collocation of new transmission equipment;

(B) removal of transmission equipment; or

(C) replacement of transmission equipment.

(3) Applicability of environmental laws

Nothing in paragraph (1) shall be construed to relieve the Commission from the requirements of the National Historic Preservation Act or the National Environmental Policy Act of 1969.

(b) Federal easements and rights-of-way

(1) Grant

If an executive agency, a State, a political subdivision or agency of a State, or a person, firm, or organization applies for the grant of an easement or right-of-way to, in, over, or on a building or other property owned by the Federal Government for the right to install, construct, and maintain wireless service antenna structures and equipment and backhaul transmission equipment, the executive agency having control of the building or other property may grant to the applicant, on behalf of the Federal Government, an easement or right-of-way to perform such installation, construction, and maintenance.

(2) Application

The Administrator of General Services shall develop a common form for applications for easements and rights-of-way under paragraph (1) for all executive agencies that shall be used by applicants with respect to the buildings or other property of each such agency.

(3) Fee

(A) In general

Notwithstanding any other provision of law, the Administrator of General Services shall establish a fee for the grant of an easement or right-of-way pursuant to paragraph (1) that is based on direct cost recovery.

(B) Exceptions

The Administrator of General Services may establish exceptions to the fee amount required under subparagraph (A)--

(i) in consideration of the public benefit provided by a grant of an easement or right-of-way; and

(ii) in the interest of expanding wireless and broadband coverage.

(4) Use of fees collected

Any fee amounts collected by an executive agency pursuant to paragraph (3) may be made available, as provided in appropriations Acts, to such agency to cover the costs of granting the easement or right-of-way.

(c) Master contracts for wireless facility sitings

(1) In general

Notwithstanding section 704 of the Telecommunications Act of 1996 or any other provision of law, and not later than 60 days after February 22, 2012, the Administrator of General Services shall--

(A) develop 1 or more master contracts that shall govern the placement of wireless service antenna structures on buildings and other property owned by the Federal Government; and

(B) in developing the master contract or contracts, standardize the treatment of the placement of wireless service antenna structures on building rooftops or facades, the placement of wireless service antenna equipment on rooftops or inside buildings, the technology used in connection with wireless service antenna structures or equipment placed on Federal buildings and other property, and any other key issues the Administrator of General Services considers appropriate.

(2) Applicability

The master contract or contracts developed by the Administrator of General Services under paragraph (1) shall apply to all publicly accessible buildings and other property owned by the Federal Government, unless the Administrator of General Services decides that issues with respect to the siting of a wireless service antenna structure on a specific building or other property warrant nonstandard treatment of such building or other property.

(3) Application

The Administrator of General Services shall develop a common form or set of forms for wireless service antenna structure siting applications under this subsection for all executive agencies that shall be used by applicants with respect to the buildings and other property of each such agency.

(d) Executive agency defined

In this section, the term “executive agency” has the meaning given such term in section 102 of Title 40.

CREDIT(S)

(Pub.L. 112-96, Title VI, § 6409, Feb. 22, 2012, 126 Stat. 232.)

47 U.S.C.A. § 1455, 47 USCA § 1455
Current through P.L. 114-9 approved 4-7-2015

End of Document

54 U.S.C.A. § 306108

§ 306108. Effect of undertaking on historic property

Effective: December 19, 2014

Currentness

The head of any Federal agency having direct or indirect jurisdiction over a proposed Federal or federally assisted undertaking in any State and the head of any Federal department or independent agency having authority to license any undertaking, prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license, shall take into account the effect of the undertaking on any historic property. The head of the Federal agency shall afford the Council a reasonable opportunity to comment with regard to the undertaking.

CREDIT(S)

(Pub.L. 113-287, § 3, Dec. 19, 2014, 128 Stat. 3227.)

Notes of Decisions (205)

54 U.S.C.A. § 306108, 54 USCA § 306108
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End of Document

Code of Federal Regulations
Title 36. Parks, Forests, and Public Property
Chapter VIII. Advisory Council on Historic Preservation
Part 800. Protection of Historic Properties (Refs & Annos)
Subpart B. The Section 106 Process

36 C.F.R. § 800.3

§ 800.3 Initiation of the section 106 process.

Currentness

(a) Establish undertaking. The agency official shall determine whether the proposed Federal action is an undertaking as defined in § 800.16(y) and, if so, whether it is a type of activity that has the potential to cause effects on historic properties.

(1) No potential to cause effects. If the undertaking is a type of activity that does not have the potential to cause effects on historic properties, assuming such historic properties were present, the agency official has no further obligations under section 106 or this part.

(2) Program alternatives. If the review of the undertaking is governed by a Federal agency program alternative established under § 800.14 or a programmatic agreement in existence before January 11, 2001, the agency official shall follow the program alternative.

(b) Coordinate with other reviews. The agency official should coordinate the steps of the section 106 process, as appropriate, with the overall planning schedule for the undertaking and with any reviews required under other authorities such as the National Environmental Policy Act, the Native American Graves Protection and Repatriation Act, the American Indian Religious Freedom Act, the Archeological Resources Protection Act, and agency-specific legislation, such as section 4(f) of the Department of Transportation Act. Where consistent with the procedures in this subpart, the agency official may use information developed for other reviews under Federal, State, or tribal law to meet the requirements of section 106.

(c) Identify the appropriate SHPO and/or THPO. As part of its initial planning, the agency official shall determine the appropriate SHPO or SHPOs to be involved in the section 106 process. The agency official shall also determine whether the undertaking may occur on or affect historic properties on any tribal lands and, if so, whether a THPO has assumed the duties of the SHPO. The agency official shall then initiate consultation with the appropriate officer or officers.

(1) Tribal assumption of SHPO responsibilities. Where an Indian tribe has assumed the section 106 responsibilities of the SHPO on tribal lands pursuant to section 101(d)(2) of the act, consultation for undertakings occurring on tribal land or for effects on tribal land is with the THPO for the Indian tribe in lieu of the SHPO. Section 101(d)(2)(D)(iii) of the act authorizes owners of properties on tribal lands which are neither owned by a member of the tribe nor held in trust by the

Secretary for the benefit of the tribe to request the SHPO to participate in the section 106 process in addition to the THPO.

(2) Undertakings involving more than one State. If more than one State is involved in an undertaking, the involved SHPOs may agree to designate a lead SHPO to act on their behalf in the section 106 process, including taking actions that would conclude the section 106 process under this subpart.

(3) Conducting consultation. The agency official should consult with the SHPO/THPO in a manner appropriate to the agency planning process for the undertaking and to the nature of the undertaking and its effects on historic properties.

(4) Failure of the SHPO/THPO to respond. If the SHPO/THPO fails to respond within 30 days of receipt of a request for review of a finding or determination, the agency official may either proceed to the next step in the process based on the finding or determination or consult with the Council in lieu of the SHPO/THPO. If the SHPO/THPO re-enters the Section 106 process, the agency official shall continue the consultation without being required to reconsider previous findings or determinations.

(d) Consultation on tribal lands. Where the Indian tribe has not assumed the responsibilities of the SHPO on tribal lands, consultation with the Indian tribe regarding undertakings occurring on such tribe's lands or effects on such tribal lands shall be in addition to and on the same basis as consultation with the SHPO. If the SHPO has withdrawn from the process, the agency official may complete the section 106 process with the Indian tribe and the Council, as appropriate. An Indian tribe may enter into an agreement with a SHPO or SHPOs specifying the SHPO's participation in the section 106 process for undertakings occurring on or affecting historic properties on tribal lands.

(e) Plan to involve the public. In consultation with the SHPO/THPO, the agency official shall plan for involving the public in the section 106 process. The agency official shall identify the appropriate points for seeking public input and for notifying the public of proposed actions, consistent with § 800 2(d).

(f) Identify other consulting parties. In consultation with the SHPO/THPO, the agency official shall identify any other parties entitled to be consulting parties and invite them to participate as such in the section 106 process. The agency official may invite others to participate as consulting parties as the section 106 process moves forward.

(1) Involving local governments and applicants. The agency official shall invite any local governments or applicants that are entitled to be consulting parties under § 800.2(c).

(2) Involving Indian tribes and Native Hawaiian organizations. The agency official shall make a reasonable and good faith effort to identify any Indian tribes or Native Hawaiian organizations that might attach religious and cultural significance to historic properties in the area of potential effects and invite them to be consulting parties. Such Indian tribe or Native Hawaiian organization that requests in writing to be a consulting party shall be one.

(3) Requests to be consulting parties. The agency official shall consider all written requests of individuals and organizations to participate as consulting parties and, in consultation with the SHPO/THPO and any Indian tribe upon whose tribal lands an undertaking occurs or affects historic properties, determine which should be consulting parties.

(g) Expediting consultation. A consultation by the agency official with the SHPO/THPO and other consulting parties may address multiple steps in §§ 800.3 through 800.6 where the agency official and the SHPO/THPO agree it is appropriate as long as the consulting parties and the public have an adequate opportunity to express their views as provided in § 800.2(d).

SOURCE: 65 FR 77725, Dec. 12, 2000, unless otherwise noted.

AUTHORITY: 16 U.S.C. 470s.

Notes of Decisions (60)

Current through May 28, 2015; 80 FR 30382.

End of Document

Code of Federal Regulations
Title 36. Parks, Forests, and Public Property
Chapter VIII. Advisory Council on Historic Preservation
Part 800. Protection of Historic Properties (Refs & Annos)
Subpart C. Program Alternatives

36 C.F.R. § 800.14

§ 800.14 Federal agency program alternatives.

Currentness

(a) Alternate procedures. An agency official may develop procedures to implement section 106 and substitute them for all or part of subpart B of this part if they are consistent with the Council's regulations pursuant to section 110(a)(2)(E) of the act.

(1) Development of procedures. The agency official shall consult with the Council, the National Conference of State Historic Preservation Officers, or individual SHPO/THPOs, as appropriate, and Indian tribes and Native Hawaiian organizations, as specified in paragraph (f) of this section, in the development of alternate procedures, publish notice of the availability of proposed alternate procedures in the Federal Register and take other appropriate steps to seek public input during the development of alternate procedures.

(2) Council review. The agency official shall submit the proposed alternate procedures to the Council for a 60–day review period. If the Council finds the procedures to be consistent with this part, it shall notify the agency official and the agency official may adopt them as final alternate procedures.

(3) Notice. The agency official shall notify the parties with which it has consulted and publish notice of final alternate procedures in the Federal Register.

(4) Legal effect. Alternate procedures adopted pursuant to this subpart substitute for the Council's regulations for the purposes of the agency's compliance with section 106, except that where an Indian tribe has entered into an agreement with the Council to substitute tribal historic preservation regulations for the Council's regulations under section 101(d)(5) of the act, the agency shall follow those regulations in lieu of the agency's procedures regarding undertakings on tribal lands. Prior to the Council entering into such agreements, the Council will provide Federal agencies notice and opportunity to comment on the proposed substitute tribal regulations.

(b) Programmatic agreements. The Council and the agency official may negotiate a programmatic agreement to govern the implementation of a particular program or the resolution of adverse effects from certain complex project situations or multiple undertakings.

(1) Use of programmatic agreements. A programmatic agreement may be used:

(i) When effects on historic properties are similar and repetitive or are multi–State or regional in scope;

(ii) When effects on historic properties cannot be fully determined prior to approval of an undertaking;

(iii) When nonfederal parties are delegated major decisionmaking responsibilities;

(iv) Where routine management activities are undertaken at Federal installations, facilities, or other land-management units; or

(v) Where other circumstances warrant a departure from the normal section 106 process.

(2) Developing programmatic agreements for agency programs.

(i) The consultation shall involve, as appropriate, SHPO/THPOs, the National Conference of State Historic Preservation Officers (NCSHPO), Indian tribes and Native Hawaiian organizations, other Federal agencies, and members of the public. If the programmatic agreement has the potential to affect historic properties on tribal lands or historic properties of religious and cultural significance to an Indian tribe or Native Hawaiian organization, the agency official shall also follow paragraph (f) of this section.

(ii) Public participation. The agency official shall arrange for public participation appropriate to the subject matter and the scope of the program and in accordance with subpart A of this part. The agency official shall consider the nature of the program and its likely effects on historic properties and take steps to involve the individuals, organizations and entities likely to be interested.

(iii) Effect. The programmatic agreement shall take effect when executed by the Council, the agency official and the appropriate SHPOs/THPOs when the programmatic agreement concerns a specific region or the president of NCSHPO when NCSHPO has participated in the consultation. A programmatic agreement shall take effect on tribal lands only when the THPO, Indian tribe, or a designated representative of the tribe is a signatory to the agreement. Compliance with the procedures established by an approved programmatic agreement satisfies the agency's section 106 responsibilities for all individual undertakings of the program covered by the agreement until it expires or is terminated by the agency, the president of NCSHPO when a signatory, or the Council. Termination by an individual SHPO/THPO shall only terminate the application of a regional programmatic agreement within the jurisdiction of the SHPO/THPO. If a THPO assumes the responsibilities of a SHPO pursuant to section 101(d)(2) of the act and the SHPO is signatory to programmatic agreement, the THPO assumes the role of a signatory, including the right to terminate a regional

programmatic agreement on lands under the jurisdiction of the tribe.

(iv) Notice. The agency official shall notify the parties with which it has consulted that a programmatic agreement has been executed under paragraph (b) of this section, provide appropriate public notice before it takes effect, and make any internal agency procedures implementing the agreement readily available to the Council, SHPO/THPOs, and the public.

(v) If the Council determines that the terms of a programmatic agreement are not being carried out, or if such an agreement is terminated, the agency official shall comply with subpart B of this part with regard to individual undertakings of the program covered by the agreement.

(3) Developing programmatic agreements for complex or multiple undertakings. Consultation to develop a programmatic agreement for dealing with the potential adverse effects of complex projects or multiple undertakings shall follow § 800.6. If consultation pertains to an activity involving multiple undertakings and the parties fail to reach agreement, then the agency official shall comply with the provisions of subpart B of this part for each individual undertaking.

(4) Prototype programmatic agreements. The Council may designate an agreement document as a prototype programmatic agreement that may be used for the same type of program or undertaking in more than one case or area. When an agency official uses such a prototype programmatic agreement, the agency official may develop and execute the agreement with the appropriate SHPO/THPO and the agreement shall become final without need for Council participation in consultation or Council signature.

(c) Exempted categories.

(1) Criteria for establishing. The Council or an agency official may propose a program or category of undertakings that may be exempted from review under the provisions of subpart B of this part, if the program or category meets the following criteria:

(i) The actions within the program or category would otherwise qualify as “undertakings” as defined in § 800.16;

(ii) The potential effects of the undertakings within the program or category upon historic properties are foreseeable and likely to be minimal or not adverse; and

(iii) Exemption of the program or category is consistent with the purposes of the act.

(2) Public participation. The proponent of the exemption shall arrange for public participation appropriate to the subject

matter and the scope of the exemption and in accordance with the standards in subpart A of this part. The proponent of the exemption shall consider the nature of the exemption and its likely effects on historic properties and take steps to involve individuals, organizations and entities likely to be interested.

(3) Consultation with SHPOs/THPOs. The proponent of the exemption shall notify and consider the views of the SHPOs/THPOs on the exemption.

(4) Consultation with Indian tribes and Native Hawaiian organizations. If the exempted program or category of undertakings has the potential to affect historic properties on tribal lands or historic properties of religious and cultural significance to an Indian tribe or Native Hawaiian organization, the Council shall follow the requirements for the agency official set forth in paragraph (f) of this section.

(5) Council review of proposed exemptions. The Council shall review an exemption proposal that is supported by documentation describing the program or category for which the exemption is sought, demonstrating that the criteria of paragraph (c)(1) of this section have been met, describing the methods used to seek the views of the public, and summarizing any views submitted by the SHPO/THPOs, the public, and any others consulted. Unless it requests further information, the Council shall approve or reject the proposed exemption within 30 days of receipt, and thereafter notify the relevant agency official and SHPO/THPOs of the decision. The decision shall be based on the consistency of the exemption with the purposes of the act, taking into consideration the magnitude of the exempted undertaking or program and the likelihood of impairment of historic properties in accordance with section 214 of the act.

(6) Legal consequences. Any undertaking that falls within an approved exempted program or category shall require no further review pursuant to subpart B of this part, unless the agency official or the Council determines that there are circumstances under which the normally excluded undertaking should be reviewed under subpart B of this part.

(7) Termination. The Council may terminate an exemption at the request of the agency official or when the Council determines that the exemption no longer meets the criteria of paragraph (c)(1) of this section. The Council shall notify the agency official 30 days before termination becomes effective.

(8) Notice. The proponent of the exemption shall publish notice of any approved exemption in the Federal Register.

(d) Standard treatments.

(1) Establishment. The Council, on its own initiative or at the request of another party, may establish standard methods for the treatment of a category of historic properties, a category of undertakings, or a category of effects on historic properties to assist Federal agencies in satisfying the requirements of subpart B of this part. The Council shall publish notice of standard treatments in the Federal Register.

(2) Public participation. The Council shall arrange for public participation appropriate to the subject matter and the scope of the standard treatment and consistent with subpart A of this part. The Council shall consider the nature of the standard treatment and its likely effects on historic properties and the individuals, organizations and entities likely to be interested. Where an agency official has proposed a standard treatment, the Council may request the agency official to arrange for public involvement.

(3) Consultation with SHPOs/THPOs. The Council shall notify and consider the views of SHPOs/THPOs on the proposed standard treatment.

(4) Consultation with Indian tribes and Native Hawaiian organizations. If the proposed standard treatment has the potential to affect historic properties on tribal lands or historic properties of religious and cultural significance to an Indian tribe or Native Hawaiian organization, the Council shall follow the requirements for the agency official set forth in paragraph (f) of this section.

(5) Termination. The Council may terminate a standard treatment by publication of a notice in the Federal Register 30 days before the termination takes effect.

(e) Program comments. An agency official may request the Council to comment on a category of undertakings in lieu of conducting individual reviews under §§ 800.4 through 800.6. The Council may provide program comments at its own initiative.

(1) Agency request. The agency official shall identify the category of undertakings, specify the likely effects on historic properties, specify the steps the agency official will take to ensure that the effects are taken into account, identify the time period for which the comment is requested and summarize any views submitted by the public.

(2) Public participation. The agency official shall arrange for public participation appropriate to the subject matter and the scope of the category and in accordance with the standards in subpart A of this part. The agency official shall consider the nature of the undertakings and their likely effects on historic properties and the individuals, organizations and entities likely to be interested.

(3) Consultation with SHPOs/THPOs. The Council shall notify and consider the views of SHPOs/THPOs on the proposed program comment.

(4) Consultation with Indian tribes and Native Hawaiian organizations. If the program comment has the potential to affect historic properties on tribal lands or historic properties of religious and cultural significance to an Indian tribe or Native Hawaiian organization, the Council shall follow the requirements for the agency official set forth in paragraph (f) of this section.

(5) Council action. Unless the Council requests additional documentation, notifies the agency official that it will decline to comment, or obtains the consent of the agency official to extend the period for providing comment, the Council shall comment to the agency official within 45 days of the request.

(i) If the Council comments, the agency official shall take into account the comments of the Council in carrying out the undertakings within the category and publish notice in the Federal Register of the Council's comments and steps the agency will take to ensure that effects to historic properties are taken into account.

(ii) If the Council declines to comment, the agency official shall continue to comply with the requirements of §§ 800.3 through 800.6 for the individual undertakings.

(6) Withdrawal of comment. If the Council determines that the consideration of historic properties is not being carried out in a manner consistent with the program comment, the Council may withdraw the comment and the agency official shall comply with the requirements of §§ 800.3 through 800.6 for the individual undertakings.

(f) Consultation with Indian tribes and Native Hawaiian organizations when developing program alternatives. Whenever an agency official proposes a program alternative pursuant to paragraphs (a) through (e) of this section, the agency official shall ensure that development of the program alternative includes appropriate government-to-government consultation with affected Indian tribes and consultation with affected Native Hawaiian organizations.

(1) Identifying affected Indian tribes and Native Hawaiian organizations. If any undertaking covered by a proposed program alternative has the potential to affect historic properties on tribal lands, the agency official shall identify and consult with the Indian tribes having jurisdiction over such lands. If a proposed program alternative has the potential to affect historic properties of religious and cultural significance to an Indian tribe or a Native Hawaiian organization which are located off tribal lands, the agency official shall identify those Indian tribes and Native Hawaiian organizations that might attach religious and cultural significance to such properties and consult with them. When a proposed program alternative has nationwide applicability, the agency official shall identify an appropriate government to government consultation with Indian tribes and consult with Native Hawaiian organizations in accordance with existing Executive orders, Presidential memoranda, and applicable provisions of law.

(2) Results of consultation. The agency official shall provide summaries of the views, along with copies of any written comments, provided by affected Indian tribes and Native Hawaiian organizations to the Council as part of the documentation for the proposed program alternative. The agency official and the Council shall take those views into account in reaching a final decision on the proposed program alternative.

Credits

[69 FR 40554, July 6, 2004]

SOURCE: 65 FR 77725, Dec. 12, 2000, unless otherwise noted.

AUTHORITY: 16 U.S.C. 470s.

Notes of Decisions (2)

Current through May 28, 2015; 80 FR 30382.

End of Document

40 C.F.R. § 1508.4

§ 1508.4 Categorical exclusion.

Currentness

Categorical exclusion means a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency in implementation of these regulations (§ 1507.3) and for which, therefore, neither an environmental assessment nor an environmental impact statement is required. An agency may decide in its procedures or otherwise, to prepare environmental assessments for the reasons stated in § 1508.9 even though it is not required to do so. Any procedures under this section shall provide for extraordinary circumstances in which a normally excluded action may have a significant environmental effect.

SOURCE: 43 FR 56003, Nov. 29, 1978, unless otherwise noted.

AUTHORITY: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and Executive Order 11514 (Mar. 5, 1970, as amended by Executive Order 11991, May 24, 1977).

Notes of Decisions (151)

Current through May 28, 2015; 80 FR 30382.

End of Document

Code of Federal Regulations
Title 47. Telecommunication
Chapter I. Federal Communications Commission (Refs & Annos)
Subchapter A. General
Part 1. Practice and Procedure (Refs & Annos)
Subpart F. Wireless Radio Services Applications and Proceedings (Refs & Annos)
Application Requirements and Procedures

47 C.F.R. § 1.925

§ 1.925 Waivers.

Currentness

(a) Waiver requests generally. The Commission may waive specific requirements of the rules on its own motion or upon request. The fees for such waiver requests are set forth in § 1.1102 of this part.

(b) Procedure and format for filing waiver requests.

(1) Requests for waiver of rules associated with licenses or applications in the Wireless Radio Services must be filed on FCC Form 601, 603, or 605.

(2) Requests for waiver must contain a complete explanation as to why the waiver is desired. If the information necessary to support a waiver request is already on file, the applicant may cross-reference the specific filing where the information may be found.

(3) The Commission may grant a request for waiver if it is shown that:

(i) The underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or

(ii) In view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.

(4) Applicants requiring expedited processing of their request for waiver shall clearly caption their request for waiver

with the words "WAIVER—EXPEDITED ACTION REQUESTED."

(c) Action on Waiver Requests.

(i) The Commission, in its discretion, may give public notice of the filing of a waiver request and seek comment from the public or affected parties.

(ii) Denial of a rule waiver request associated with an application renders that application defective unless it contains an alternative proposal that fully complies with the rules, in which event, the application will be processed using the alternative proposal as if the waiver had not been requested. Applications rendered defective may be dismissed without prejudice.

SOURCE: 56 FR 57598, Nov. 13, 1991; 57 FR 187, Jan. 3, 1992; 58 FR 27473, May 10, 1993; 59 FR 22985, May 4, 1994; 61 FR 45618, Aug. 29, 1996; 61 FR 46561, Sept. 4, 1996; 61 FR 52899, Oct. 9, 1996; 62 FR 37422, July 11, 1997; 63 FR 67429, Dec. 7, 1998; 63 FR 68920, Dec. 14, 1998; 63 FR 71036, Dec. 23, 1998; 64 FR 63251, Nov. 19, 1999; 65 FR 10720, Feb. 29, 2000; 65 FR 19684, April 12, 2000; 65 FR 31281, May 17, 2000; 69 FR 77938, Dec. 29, 2004; 70 FR 61058, Oct. 20, 2005; 71 FR 26251, May 4, 2006; 74 FR 39227, Aug. 6, 2009; 75 FR 9797, March 4, 2010; 76 FR 43203, July 20, 2011; 77 FR 71137, Nov. 29, 2012; 78 FR 10100, Feb. 13, 2013; 78 FR 15622, March 12, 2013; 78 FR 41321, July 10, 2013; 78 FR 50254, Aug. 16, 2013; 79 FR 48528, Aug. 15, 2014; 80 FR 1268, Jan. 8, 2015, unless otherwise noted.

AUTHORITY: 15 U.S.C. 79, et seq.; 47 U.S.C. 151, 154(i), 154(j), 155, 157, 160, 201, 225, 227, 303, 309, 332, 1403, 1404, 1451, 1452, and 1455.

Notes of Decisions (20)

Current through May 28, 2015; 80 FR 30382.

End of Document

Code of Federal Regulations
Title 47. Telecommunication
Chapter I. Federal Communications Commission (Refs & Annos)
Subchapter A. General
Part 1. Practice and Procedure (Refs & Annos)
Subpart I. Procedures Implementing the National Environmental Policy Act of 1969 (Refs & Annos)

47 C.F.R. § 1.1305

§ 1.1305 Actions which normally will have a significant impact upon the environment, for which Environmental Impact Statements must be prepared.

Currentness

Any Commission action deemed to have a significant effect upon the quality of the human environment requires the preparation of a Draft Environmental Impact Statement (DEIS) and Final Environmental Impact Statement (FEIS) (collectively referred to as EISs) (see §§ 1.1314, 1.1315 and 1.1317). The Commission has reviewed representative actions and has found no common pattern which would enable it to specify actions that will thus automatically require EISs.

Note: Our current application forms refer applicants to § 1.1305 to determine if their proposals are such that the submission of environmental information is required (see § 1.1311). Until the application forms are revised to reflect our new environmental rules, applicants should refer to § 1.1307. Section 1.1307 now delineates those actions for which applicants must submit environmental information.

Credits

[39 FR 43843, Dec. 19, 1974, as amended at 40 FR 53393, Nov. 18, 1975; 42 FR 59755, Nov. 21, 1977; 50 FR 11160, March 20, 1985; 50 FR 38653, Sept. 24, 1985; 51 FR 15000, April 22, 1986]

SOURCE: 39 FR 43843, Dec. 19, 1974; 56 FR 57598, Nov. 13, 1991; 57 FR 187, Jan. 3, 1992; 58 FR 27473, May 10, 1993; 59 FR 22985, May 4, 1994; 61 FR 45618, Aug. 29, 1996; 61 FR 46561, Sept. 4, 1996; 61 FR 52899, Oct. 9, 1996; 62 FR 37422, July 11, 1997; 63 FR 67429, Dec. 7, 1998; 63 FR 71036, Dec. 23, 1998; 64 FR 63251, Nov. 19, 1999; 65 FR 10720, Feb. 29, 2000; 65 FR 19684, April 12, 2000; 65 FR 31281, May 17, 2000; 69 FR 77938, Dec. 29, 2004; 71 FR 26251, May 4, 2006; 74 FR 39227, Aug. 6, 2009; 75 FR 9797, March 4, 2010; 76 FR 43203, July 20, 2011; 77 FR 71137, Nov. 29, 2012; 78 FR 10100, Feb. 13, 2013; 78 FR 15622, March 12, 2013; 78 FR 41321, July 10, 2013; 78 FR 50254, Aug. 16, 2013; 79 FR 48528, Aug. 15, 2014; 80 FR 1268, Jan. 8, 2015, unless otherwise noted.

AUTHORITY: 15 U.S.C. 79, et seq.; 47 U.S.C. 151, 154(i), 154(j), 155, 157, 160, 201, 225, 227, 303, 309, 332, 1403, 1404, 1451, 1452, and 1455.

Current through May 28, 2015; 80 FR 30382.

End of Document

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Title 47. Telecommunication
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Part 1. Practice and Procedure (Refs & Annos)
Subpart I. Procedures Implementing the National Environmental Policy Act of 1969 (Refs & Annos)

47 C.F.R. § 1.1307

§ 1.1307 Actions that may have a significant environmental effect, for which Environmental Assessments (EAs) must be prepared.

Effective: February 9, 2015

Currentness

(a) Commission actions with respect to the following types of facilities may significantly affect the environment and thus require the preparation of EAs by the applicant (see §§ 1.1308 and 1.1311) and may require further Commission environmental processing (see §§ 1.1314, 1.1315 and 1.1317):

(1) Facilities that are to be located in an officially designated wilderness area.

(2) Facilities that are to be located in an officially designated wildlife preserve.

(3) Facilities that:

(i) May affect listed threatened or endangered species or designated critical habitats; or

(ii) are likely to jeopardize the continued existence of any proposed endangered or threatened species or likely to result in the destruction or adverse modification of proposed critical habitats, as determined by the Secretary of the Interior pursuant to the Endangered Species Act of 1973.

Note: The list of endangered and threatened species is contained in 50 CFR 17.11, 17.22, 222.23(a) and 227.4. The list of designated critical habitats is contained in 50 CFR 17.95, 17.96 and part 226. To ascertain the status of proposed species and habitats, inquiries may be directed to the Regional Director of the Fish and Wildlife Service, Department of the Interior.

(4)(i) Facilities that may affect districts, sites, buildings, structures or objects, significant in American history, architecture, archeology, engineering or culture, that are listed, or are eligible for listing, in the National Register of Historic Places. (See 16 U.S.C. 470w(5); 36 CFR part 60 and 800.) To ascertain whether a proposed action may affect properties that are listed or eligible for listing in the National Register of Historic Places, an applicant shall follow the procedures set forth in the rules of the Advisory Council on Historic Preservation, 36 CFR part 800, as modified and supplemented by the Nationwide Programmatic Agreement for the Collocation of Wireless Antennas, Appendix B to Part 1 of this Chapter, and the Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process, Appendix C to Part 1 of this Chapter.

(ii) The requirements in paragraph (a)(4)(i) of this section do not apply to:

(A) The mounting of antennas (including associated equipment such as wiring, cabling, cabinets, or backup-power) on existing utility structures (including utility poles and electric transmission towers in active use by a "utility" as defined in Section 224 of the Communications Act, 47 U.S.C. 224, but not including light poles, lamp posts, and other structures whose primary purpose is to provide public lighting) where the deployment meets the following conditions:

(1) All antennas that are part of the deployment fit within enclosures (or if the antennas are exposed, within imaginary enclosures) that are individually no more than three cubic feet in volume, and all antennas on the structure, including any pre-existing antennas on the structure, fit within enclosures (or if the antennas are exposed, within imaginary enclosures) that total no more than six cubic feet in volume;

(2) All other wireless equipment associated with the structure, including pre-existing enclosures and including equipment on the ground associated with antennas on the structure, are cumulatively no more than seventeen cubic feet in volume, exclusive of

(i) Vertical cable runs for the connection of power and other services;

(ii) Ancillary equipment installed by other entities that is outside of the applicant's ownership or control, and

(iii) Comparable equipment from pre-existing wireless deployments on the structure;

(3) The deployment will involve no new ground disturbance; and

(4) The deployment would otherwise require the preparation of an EA under paragraph (a)(4)(i) of this section solely because of the age of the structure; or

(B) The mounting of antennas (including associated equipment such as wiring, cabling, cabinets, or backup-power) on buildings or other non-tower structures where the deployment meets the following conditions:

(1) There is an existing antenna on the building or structure;

(2) One of the following criteria is met:

(i) Non–Visible Antennas. The new antenna is not visible from any adjacent streets or surrounding public spaces and is added in the same vicinity as a pre-existing antenna;

(ii) Visible Replacement Antennas. The new antenna is visible from adjacent streets or surrounding public spaces, provided that

(A) It is a replacement for a pre-existing antenna,

(B) The new antenna will be located in the same vicinity as the pre-existing antenna,

(C) The new antenna will be visible only from adjacent streets and surrounding public spaces that also afford views of the pre-existing antenna,

(D) The new antenna is not more than 3 feet larger in height or width (including all protuberances) than the pre-existing antenna, and

(E) No new equipment cabinets are visible from the adjacent streets or surrounding public spaces; or

(iii) Other Visible Antennas. The new antenna is visible from adjacent streets or surrounding public spaces, provided that

(A) It is located in the same vicinity as a pre-existing antenna,

(B) The new antenna will be visible only from adjacent streets and surrounding public spaces that also afford views of the pre-existing antenna,

(C) The pre-existing antenna was not deployed pursuant to the exclusion in this subsection (§ 1.1307(a)(4)(ii)(B)(2)(iii)),

(D) The new antenna is not more than three feet larger in height or width (including all protuberances) than the pre-existing antenna, and

(E) No new equipment cabinets are visible from the adjacent streets or surrounding public spaces;

(3) The new antenna complies with all zoning conditions and historic preservation conditions applicable to existing antennas in the same vicinity that directly mitigate or prevent effects, such as camouflage or concealment requirements;

(4) The deployment of the new antenna involves no new ground disturbance; and

(5) The deployment would otherwise require the preparation of an EA under paragraph (a)(4) of this section solely because of the age of the structure.

Note to paragraph (a)(4)(ii): A non-visible new antenna is in the "same vicinity" as a pre-existing antenna if it will be collocated on the same rooftop, façade or other surface. A visible new antenna is in the "same vicinity" as a pre-existing antenna if it is on the same rooftop, façade, or other surface and the centerpoint of the new antenna is within ten feet of the centerpoint of the pre-existing antenna. A deployment causes no new ground disturbance when the depth and width of previous disturbance exceeds the proposed construction depth and width by at least two feet.

(5) Facilities that may affect Indian religious sites.

(6) Facilities to be located in a flood Plain (See Executive Order 11988.)

(7) Facilities whose construction will involve significant change in surface features (e.g., wetland fill, deforestation or water diversion). (In the case of wetlands on Federal property, see Executive Order 11990.)

(8) Antenna towers and/or supporting structures that are to be equipped with high intensity white lights which are to be located in residential neighborhoods, as defined by the applicable zoning law.

(b) In addition to the actions listed in paragraph (a) of this section, Commission actions granting construction permits, licenses to transmit or renewals thereof, equipment authorizations or modifications in existing facilities, require the preparation of an Environmental Assessment (EA) if the particular facility, operation or transmitter would cause human exposure to levels of radiofrequency radiation in excess of the limits in §§ 1.1310 and 2.1093 of this chapter. Applications to the Commission for construction permits, licenses to transmit or renewals thereof, equipment authorizations or modifications in existing facilities must contain a statement confirming compliance with the limits unless the facility, operation, or transmitter is categorically excluded, as discussed below. Technical information showing the basis for this statement must be submitted to the Commission upon request. Such compliance statements may be omitted from license applications for transceivers subject to the certification requirement in § 25.129 of this chapter.

(1) The appropriate exposure limits in §§ 1.1310 and 2.1093 of this chapter are generally applicable to all facilities, operations and transmitters regulated by the Commission. However, a determination of compliance with the exposure limits in § 1.1310 or § 2.1093 of this chapter (routine environmental evaluation), and preparation of an EA if the limits are exceeded, is necessary only for facilities, operations and transmitters that fall into the categories listed in table 1, or those specified in paragraph (b)(2) of this section. All other facilities, operations and transmitters are categorically excluded from making such studies or preparing an EA, except as indicated in paragraphs (c) and (d) of this section. For purposes of table 1, building-mounted antennas means antennas mounted in or on a building structure that is occupied as a workplace or residence. The term power in column 2 of table 1 refers to total operating power of the transmitting operation in question in terms of effective radiated power (ERP), equivalent isotropically radiated power (EIRP), or peak envelope power (PEP), as defined in § 2.1 of this chapter. For the case of the Cellular Radiotelephone Service, subpart H of part 22 of this chapter; the Personal Communications Service, part 24 of this chapter and the Specialized Mobile Radio Service, part 90 of this chapter, the phrase total power of all channels in column 2 of table 1 means the sum of the ERP or EIRP of all co-located simultaneously operating transmitters owned and operated by a single licensee. When applying the criteria of table 1, radiation in all directions should be considered. For the case of transmitting facilities using sectorized transmitting antennas, applicants and licensees should apply the criteria to all transmitting channels in a given sector, noting that for a highly directional antenna there is relatively little contribution to ERP or EIRP summation for other directions.

Table 1.—Transmitters, Facilities and Operations Subject to Routine Environmental Evaluation

Service (title 47 CFR rule part)	Evaluation required if:
Experimental Radio Services (part 5)	Power > 100 W ERP (164 W EIRP).
Commercial Mobile Radio Services (part 20)	Non-building-mounted antennas: height above ground level to lowest point of antenna < 10 m and power > 1000 W ERP (1640 W EIRP). Building-mounted antennas: power > 1000 W ERP (1640 W EIRP).
	Consumer Signal Booster equipment grantees under the Commercial Mobile Radio Services provisions in part 20 are required to attach a label to Fixed Consumer Booster antennas that:
	(1) Provides adequate notice regarding potential radiofrequency safety hazards, e.g., information regarding the safe minimum separation distance required between users

	and transmitting antennas; and
.....	(2) references the applicable FCC-adopted limits for radiofrequency exposure specified in § 1.1310.
Paging and Radiotelephone Service (subpart E of part 22).....	Non-building-mounted antennas: height above ground level to lowest point of antenna < 10 m and power > 1000 W ERP (1640 W EIRP).
.....	Building-mounted antennas: power > 1000 W ERP (1640 W EIRP).
Cellular Radiotelephone Service (subpart H of part 22).....	Non-building-mounted antennas: height above ground level to lowest point of antenna < 10 m and total power of all channels > 1000 W ERP (1640 W EIRP).
.....	Building-mounted antennas: total power of all channels > 1000 W ERP (1640 W EIRP).
Personal Communications Services (part 24).....	(1) Narrowband PCS (subpart D):
.....	Non-building-mounted antennas: height above ground level to lowest point of antenna < 10 m and total power of all channels > 1000 W ERP (1640 W EIRP).
.....	Building-mounted antennas: total power of all channels > 1000 W ERP (1640 W EIRP).
.....	(2) Broadband PCS (subpart E):
.....	Non-building-mounted antennas: height above ground level to lowest point of antenna < 10 m and total power of all channels > 2000 W ERP (3280 W EIRP).
.....	Building-mounted antennas: total power of all channels > 2000 W ERP (3280 W EIRP).
Satellite Communications Services (part 25).....	All included.
.....	In addition, for NGSO subscriber equipment, licensees are required to attach a label to subscriber transceiver antennas

	that:
.....	(1) provides adequate notice regarding potential radiofrequency safety hazards, e.g., information regarding the safe minimum separation distance required between users and transceiver antennas; and
.....	(2) references the applicable FCC-adopted limits for radiofrequency exposure specified in § 1.1310 of this chapter.
Miscellaneous Wireless Communications Services (part 27 except subpart M)	(1) For the 1390-1392 MHz, 1392-1395 MHz, 1432-1435 MHz, 1670-1675 MHz, and 2385-2390 MHz bands:
.....	Non-building-mounted antennas: height above ground level to lowest point of antenna < 10 m and total power of all channels > 2000 W ERP (3280 W EIRP).
.....	Building-mounted antennas: total power of all channels > 2000 W ERP (3280 W EIRP).
.....	(2) For the 698-746 MHz, 746-764 MHz, 776-794 MHz, 2305-2320 MHz, and 2345-2360 MHz bands:
.....	Total power of all channels > 1000 W ERP (1640 W EIRP).
Broadband Radio Service and Educational Broadband Service (subpart M of part 27)	Non-building-mounted antennas: height above ground level to lowest point of antenna < 10 m and power > 1640 W EIRP.
.....	Building-mounted antennas: power > 1640 W EIRP.
.....	BRS and EBS licensees are required to attach a label to subscriber transceiver or transverter antennas that:
.....	(1) provides adequate notice regarding potential radiofrequency safety hazards, e.g., information regarding the safe minimum separation distance required between users and transceiver antennas; and
.....	(2) references the applicable FCC-adopted limits for radiofrequency exposure specified in § 1.1310.

Radio Broadcast Services (part 73)	All included.
Auxiliary and Special Broadcast and Other Program Distributional Services (part 74)	Subparts G and L: Power > 100 W ERP.
Stations in the Maritime Services (part 80)	Ship earth stations only.
Private Land Mobile Radio Services Paging Operations (subpart P of part 90)	Non-building-mounted antennas: height above ground level to lowest point of antenna < 10 m and power > 1000 W ERP (1640 W EIRP).
.....	Building-mounted antennas: power > 1000 W ERP (1640 W EIRP).
Private Land Mobile Radio Services Specialized Mobile Radio (subpart S of part 90)	Non-building-mounted antennas: height above ground level to lowest point of antenna < 10 m and total power of all channels > 1000 W ERP (1640 W EIRP).
.....	Building-mounted antennas: Total power of all channels > 1000 W ERP (1640 W EIRP).
Amateur Radio Service (part 97)	Transmitter output power > levels specified in § 97.13(c)(1) of this chapter.
Local Multipoint Distribution Service (subpart L of part 101) and 24 GHz (subpart G of part 101)	Non-building-mounted antennas: height above ground level to lowest point of antenna < 10 m and power > 1640 W EIRP.
.....	Building-mounted antennas: power > 1640 W EIRP.
.....	LMDS and 24 GHz Service licensees are required to attach a label to subscriber transceiver antennas that:
.....	(1) provides adequate notice regarding potential radiofrequency safety hazards, e.g., information regarding the safe minimum separation distance required between users and transceiver antennas; and
.....	(2) references the applicable FCC-adopted limits for radiofrequency exposure specified in § 1.1310.

70/80/90 GHz Bands (subpart Q of part 101)	Non-building-mounted antennas: height above ground level to lowest point of antenna < 10 m and power > 1640 W EIRP.
.....	Building-mounted antennas: power > 1640 W EIRP.
.....	Licensees are required to attach a label to transceiver antennas that:
.....	(1) provides adequate notice regarding potential radiofrequency safety hazards, e.g., information regarding the safe minimum separation distance required between users and transceiver antennas; and
.....	(2) references the applicable FCC-adopted limits for radiofrequency exposure specified in § 1.1310.

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(2)(i) Mobile and portable transmitting devices that operate in the Commercial Mobile Radio Services pursuant to part 20 of this chapter; the Cellular Radiotelephone Service pursuant to part 22 of this chapter; the Personal Communications Services (PCS) pursuant to part 24 of this chapter; the Satellite Communications Services pursuant to part 25 of this chapter; the Miscellaneous Wireless Communications Services pursuant to part 27 of this chapter; the Maritime Services (ship earth stations only) pursuant to part 80 of this chapter; the Specialized Mobile Radio Service, the 4.9 GHz Band Service, or the 3650 MHz Wireless Broadband Service pursuant to part 90 of this chapter; or the Wireless Medical Telemetry Service (WMTS), or the Medical Device Radiocommunication Service (MedRadio) pursuant to part 95 of this chapter are subject to routine environmental evaluation for RF exposure prior to equipment authorization or use, as specified in §§ 2.1091 and 2.1093 of this chapter.

(ii) Unlicensed PCS, unlicensed NII and millimeter wave devices are also subject to routine environmental evaluation for RF exposure prior to equipment authorization or use, as specified in §§ 15.253(f), 15.255(g), 15.257(g), 15.319(i), and 15.407(f) of this chapter.

(iii) Portable transmitting equipment for use in the Wireless Medical Telemetry Service (WMTS) is subject to routine environment evaluation as specified in §§ 2.1093 and 95.1125 of this chapter.

(iv) Equipment authorized for use in the Medical Device Radiocommunication Service (MedRadio) as a medical implant device or body-worn transmitter (as defined in Appendix 1 to subpart E of part 95 of this chapter) is subject to routine environmental evaluation for RF exposure prior to equipment authorization, as specified in §§ 2.1093 and 95.1221 of this chapter by finite difference time domain (FDTD) computational modeling or laboratory measurement

techniques. Where a showing is based on computational modeling, the Commission retains the discretion to request that supporting documentation and/or specific absorption rate (SAR) measurement data be submitted.

(v) All other mobile, portable, and unlicensed transmitting devices are categorically excluded from routine environmental evaluation for RF exposure under §§ 2.1091, 2.1093 of this chapter except as specified in paragraphs (c) and (d) of this section.

(3) In general, when the guidelines specified in § 1.1310 are exceeded in an accessible area due to the emissions from multiple fixed transmitters, actions necessary to bring the area into compliance are the shared responsibility of all licensees whose transmitters produce, at the area in question, power density levels that exceed 5% of the power density exposure limit applicable to their particular transmitter or field strength levels that, when squared, exceed 5% of the square of the electric or magnetic field strength limit applicable to their particular transmitter. Owners of transmitter sites are expected to allow applicants and licensees to take reasonable steps to comply with the requirements contained in § 1.1307(b) and, where feasible, should encourage co-location of transmitters and common solutions for controlling access to areas where the RF exposure limits contained in § 1.1310 might be exceeded.

(i) Applicants for proposed (not otherwise excluded) transmitters, facilities or modifications that would cause non-compliance with the limits specified in § 1.1310 at an accessible area previously in compliance must submit an EA if emissions from the applicant's transmitter or facility would result, at the area in question, in a power density that exceeds 5% of the power density exposure limit applicable to that transmitter or facility or in a field strength that, when squared, exceeds 5% of the square of the electric or magnetic field strength limit applicable to that transmitter or facility.

(ii) Renewal applicants whose (not otherwise excluded) transmitters or facilities contribute to the field strength or power density at an accessible area not in compliance with the limits specified in § 1.1310 must submit an EA if emissions from the applicant's transmitter or facility results, at the area in question, in a power density that exceeds 5% of the power density exposure limit applicable to that transmitter or facility or in a field strength that, when squared, exceeds 5% of the square of the electric or magnetic field strength limit applicable to that transmitter of facility.

(c) If an interested person alleges that a particular action, otherwise categorically excluded, will have a significant environmental effect, the person shall submit to the Bureau responsible for processing that action a written petition setting forth in detail the reasons justifying or circumstances necessitating environmental consideration in the decision-making process. (See § 1.1313). The Bureau shall review the petition and consider the environmental concerns that have been raised. If the Bureau determines that the action may have a significant environmental impact, the Bureau will require the applicant to prepare an EA (see §§ 1.1308 and 1.1311), which will serve as the basis for the determination to proceed with or terminate environmental processing.

(d) If the Bureau responsible for processing a particular action, otherwise categorically excluded, determines that the proposal may have a significant environmental impact, the Bureau, on its own motion, shall require the applicant to submit an EA. The Bureau will review and consider the EA as in paragraph (c) of this section.

NOTE to paragraph (d): Pending a final determination as to what, if any, permanent measures should be adopted specifically for the protection of migratory birds, the Bureau shall require an Environmental Assessment for an otherwise categorically

excluded action involving a new or existing antenna structure, for which an antenna structure registration application (FCC Form 854) is required under part 17 of this chapter, if the proposed antenna structure will be over 450 feet in height above ground level (AGL) and involves either:

1. Construction of a new antenna structure;

2. Modification or replacement of an existing antenna structure involving a substantial increase in size as defined in paragraph I(C)(1)(3) of Appendix B to part 1 of this chapter; or

3. Addition of lighting or adoption of a less preferred lighting style as defined in § 17.4(c)(1)(iii) of this chapter. The Bureau shall consider whether to require an EA for other antenna structures subject to § 17.4(c) of this chapter in accordance with § 17.4(c)(8) of this chapter. An Environmental Assessment required pursuant to this note will be subject to the same procedures that apply to any Environmental Assessment required for a proposed tower or modification of an existing tower for which an antenna structure registration application (FCC Form 854) is required, as set forth in § 17.4(c) of this chapter.

(e) No State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the regulations contained in this chapter concerning the environmental effects of such emissions. For purposes of this paragraph:

(1) The term personal wireless service means commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services;

(2) The term personal wireless service facilities means facilities for the provision of personal wireless services;

(3) The term unlicensed wireless services means the offering of telecommunications services using duly authorized devices which do not require individual licenses, but does not mean the provision of direct-to-home satellite services; and

(4) The term direct-to-home satellite services means the distribution or broadcasting of programming or services by satellite directly to the subscriber's premises without the use of ground receiving or distribution equipment, except at the subscriber's premises or in the uplink process to the satellite.

Credits

[51 FR 15000, April 22, 1986; 52 FR 13241, April 22, 1987; 53 FR 28224, July 27, 1988; 53 FR 28393, July 28, 1988; 53 FR 41169, Oct. 20, 1988; 54 FR 1178, Jan. 12, 1989; 54 FR 30548, July 21, 1989; 55 FR 2381, Jan. 24, 1990; 55 FR 46008, Oct. 31, 1990; 55 FR 46514, Nov. 5, 1990; 55 FR 50692, Dec. 10, 1990; 56 FR 23024, May 20, 1991; 61 FR 41014, Aug. 7, 1996; 62 FR 3240, Jan. 22, 1997; 62 FR 4654, Jan. 31, 1997; 62 FR 9654, March 3, 1997; 62 FR 23162, April 29, 1997; 62 FR 47965, Sept. 12, 1997; 62 FR 61448, Nov. 18, 1997; 63 FR 65099, Nov. 25, 1998; 64 FR 4054, Jan. 27, 1999; 64 FR

69928, Dec. 15, 1999; 65 FR 44001, July 17, 2000; 65 FR 59354, Oct. 5, 2000; 66 FR 10613, Feb. 16, 2001; 67 FR 41853, June 20, 2002; 69 FR 3259, Jan. 23, 2004; 69 FR 5709, Feb. 6, 2004; 69 FR 39867, July 1, 2004; 69 FR 72026, Dec. 10, 2004; 69 FR 77944, Dec. 29, 2004; 70 FR 578, Jan. 4, 2005; 70 FR 6771, Feb. 9, 2005; 70 FR 24723, May 11, 2005; 71 FR 13280, March 15, 2006; 74 FR 22703, May 14, 2009; 77 FR 3952, Jan. 26, 2012; 77 FR 36177, June 18, 2012; 78 FR 21558, April 11, 2013; 78 FR 25160, April 29, 2013; 78 FR 33649, June 4, 2013; 78 FR 55648, Sept. 11, 2013; 79 FR 70795, Nov. 28, 2014; 80 FR 1268, Jan. 8, 2015]

SOURCE: 39 FR 43843, Dec. 19, 1974; 56 FR 57598, Nov. 13, 1991; 57 FR 187, Jan. 3, 1992; 58 FR 27473, May 10, 1993; 59 FR 22985, May 4, 1994; 61 FR 45618, Aug. 29, 1996; 61 FR 46561, Sept. 4, 1996; 61 FR 52899, Oct. 9, 1996; 62 FR 37422, July 11, 1997; 63 FR 67429, Dec. 7, 1998; 63 FR 71036, Dec. 23, 1998; 64 FR 63251, Nov. 19, 1999; 65 FR 10720, Feb. 29, 2000; 65 FR 19684, April 12, 2000; 65 FR 31281, May 17, 2000; 69 FR 77938, Dec. 29, 2004; 71 FR 26251, May 4, 2006; 74 FR 39227, Aug. 6, 2009; 75 FR 9797, March 4, 2010; 76 FR 43203, July 20, 2011; 77 FR 71137, Nov. 29, 2012; 78 FR 10100, Feb. 13, 2013; 78 FR 15622, March 12, 2013; 78 FR 41321, July 10, 2013; 78 FR 50254, Aug. 16, 2013; 79 FR 48528, Aug. 15, 2014; 80 FR 1268, Jan. 8, 2015, unless otherwise noted.

AUTHORITY: 15 U.S.C. 79, et seq.; 47 U.S.C. 151, 154(i), 154(j), 155, 157, 160, 201, 225, 227, 303, 309, 332, 1403, 1404, 1451, 1452, and 1455.

Notes of Decisions (8)

Current through May 28, 2015; 80 FR 30382.

End of Document

Code of Federal Regulations
Title 47. Telecommunication
Chapter I. Federal Communications Commission (Refs & Annos)
Subchapter A. General
Part 1. Practice and Procedure (Refs & Annos)
Subpart CC. State and Local Review of Applications for Wireless Service Facility Modification (Refs & Annos)

47 C.F.R. § 1.40001

§ 1.40001 Wireless Facility Modifications.

Effective: May 18, 2015

Currentness

(a) Purpose. These rules implement section 6409 of the Spectrum Act (codified at 47 U.S.C. 1455), which requires a State or local government to approve any eligible facilities request for a modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station.

(b) Definitions. Terms used in this section have the following meanings.

(1) Base station. A structure or equipment at a fixed location that enables Commission-licensed or authorized wireless communications between user equipment and a communications network. The term does not encompass a tower as defined in this subpart or any equipment associated with a tower.

(i) The term includes, but is not limited to, equipment associated with wireless communications services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

(ii) The term includes, but is not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including Distributed Antenna Systems and small-cell networks).

(iii) The term includes any structure other than a tower that, at the time the relevant application is filed with the State or local government under this section, supports or houses equipment described in paragraphs (b)(1)(i) through (ii) of this section that has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support.

(iv) The term does not include any structure that, at the time the relevant application is filed with the State or local government under this section, does not support or house equipment described in paragraphs (b)(1)(i)-(ii) of this section.

(2) Collocation. The mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.

(3) Eligible facilities request. Any request for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station, involving:

(i) Collocation of new transmission equipment;

(ii) Removal of transmission equipment; or

(iii) Replacement of transmission equipment.

(4) Eligible support structure. Any tower or base station as defined in this section, provided that it is existing at the time the relevant application is filed with the State or local government under this section.

(5) Existing. A constructed tower or base station is existing for purposes of this section if it has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, provided that a tower that has not been reviewed and approved because it was not in a zoned area when it was built, but was lawfully constructed, is existing for purposes of this definition.

(6) Site. For towers other than towers in the public rights-of-way, the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site, and, for other eligible support structures, further restricted to that area in proximity to the structure and to other transmission equipment already deployed on the ground.

(7) Substantial change. A modification substantially changes the physical dimensions of an eligible support structure if it meets any of the following criteria:

(i) For towers other than towers in the public rights-of-way, it increases the height of the tower by more than 10% or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty feet, whichever is greater; for other eligible support structures, it increases the height of the structure by more than 10% or

more than ten feet, whichever is greater;

(A) Changes in height should be measured from the original support structure in cases where deployments are or will be separated horizontally, such as on buildings' rooftops; in other circumstances, changes in height should be measured from the dimensions of the tower or base station, inclusive of originally approved appurtenances and any modifications that were approved prior to the passage of the Spectrum Act.

(ii) For towers other than towers in the public rights-of-way, it involves adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than twenty feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater; for other eligible support structures, it involves adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than six feet;

(iii) For any eligible support structure, it involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets; or, for towers in the public rights-of-way and base stations, it involves installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than 10% larger in height or overall volume than any other ground cabinets associated with the structure;

(iv) It entails any excavation or deployment outside the current site;

(v) It would defeat the concealment elements of the eligible support structure; or

(vi) It does not comply with conditions associated with the siting approval of the construction or modification of the eligible support structure or base station equipment, provided however that this limitation does not apply to any modification that is non-compliant only in a manner that would not exceed the thresholds identified in § 1.40001(b)(7)(i) through (iv).

(8) Transmission equipment. Equipment that facilitates transmission for any Commission-licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply. The term includes equipment associated with wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

(9) Tower. Any structure built for the sole or primary purpose of supporting any Commission-licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site.

(c) Review of applications. A State or local government may not deny and shall approve any eligible facilities request for modification of an eligible support structure that does not substantially change the physical dimensions of such structure.

(1) Documentation requirement for review. When an applicant asserts in writing that a request for modification is covered by this section, a State or local government may require the applicant to provide documentation or information only to the extent reasonably related to determining whether the request meets the requirements of this section. A State or local government may not require an applicant to submit any other documentation, including but not limited to documentation intended to illustrate the need for such wireless facilities or to justify the business decision to modify such wireless facilities.

(2) Timeframe for review. Within 60 days of the date on which an applicant submits a request seeking approval under this section, the State or local government shall approve the application unless it determines that the application is not covered by this section.

(3) Tolling of the timeframe for review. The 60–day period begins to run when the application is filed, and may be tolled only by mutual agreement or in cases where the reviewing State or local government determines that the application is incomplete. The timeframe for review is not tolled by a moratorium on the review of applications.

(i) To toll the timeframe for incompleteness, the reviewing State or local government must provide written notice to the applicant within 30 days of receipt of the application, clearly and specifically delineating all missing documents or information. Such delineated information is limited to documents or information meeting the standard under paragraph (c)(1) of this section.

(ii) The timeframe for review begins running again when the applicant makes a supplemental submission in response to the State or local government's notice of incompleteness.

(iii) Following a supplemental submission, the State or local government will have 10 days to notify the applicant that the supplemental submission did not provide the information identified in the original notice delineating missing information. The timeframe is tolled in the case of second or subsequent notices pursuant to the procedures identified in this paragraph (c)(3). Second or subsequent notices of incompleteness may not specify missing documents or information that were not delineated in the original notice of incompleteness.

(4) Failure to act. In the event the reviewing State or local government fails to approve or deny a request seeking approval under this section within the timeframe for review (accounting for any tolling), the request shall be deemed granted. The deemed grant does not become effective until the applicant notifies the applicable reviewing authority in writing after the review period has expired (accounting for any tolling) that the application has been deemed granted.

(5) Remedies. Applicants and reviewing authorities may bring claims related to Section 6409(a) to any court of competent jurisdiction.

Credits

[80 FR 28203, May 18, 2015]

SOURCE: 56 FR 57598, Nov. 13, 1991; 57 FR 187, Jan. 3, 1992; 58 FR 27473, May 10, 1993; 59 FR 22985, May 4, 1994; 61 FR 45618, Aug. 29, 1996; 61 FR 46561, Sept. 4, 1996; 61 FR 52899, Oct. 9, 1996; 62 FR 37422, July 11, 1997; 63 FR 67429, Dec. 7, 1998; 63 FR 71036, Dec. 23, 1998; 64 FR 63251, Nov. 19, 1999; 65 FR 10720, Feb. 29, 2000; 65 FR 19684, April 12, 2000; 65 FR 31281, May 17, 2000; 69 FR 77938, Dec. 29, 2004; 71 FR 26251, May 4, 2006; 74 FR 39227, Aug. 6, 2009; 75 FR 9797, March 4, 2010; 76 FR 43203, July 20, 2011; 77 FR 71137, Nov. 29, 2012; 78 FR 10100, Feb. 13, 2013; 78 FR 15622, March 12, 2013; 78 FR 41321, July 10, 2013; 78 FR 50254, Aug. 16, 2013; 79 FR 48528, Aug. 15, 2014; 80 FR 1268, Jan. 8, 2015; 80 FR 1269, Jan. 8, 2015, unless otherwise noted.

AUTHORITY: 15 U.S.C. 79, et seq.; 47 U.S.C. 151, 154(i), 154(j), 155, 157, 160, 201, 225, 227, 303, 309, 332, 1403, 1404, 1451, 1452, and 1455.

Current through May 28, 2015; 80 FR 30382.

End of Document

47 C.F.R. Pt.1, App.B

Appendix B to Part 1—Nationwide Programmatic Agreement for the Collocation of Wireless Antennas

Effective: March 7, 2005

Currentness

Nationwide Programmatic Agreement for the Collocation of Wireless Antennas

Executed by the Federal Communications Commission, the National Conference of State Historic Preservation Officers and the Advisory Council on Historic Preservation

Whereas, the Federal Communications Commission (FCC) establishes rules and procedures for the licensing of wireless communications facilities in the United States and its Possessions and Territories; and,

Whereas, the FCC has largely deregulated the review of applications for the construction of individual wireless communications facilities and, under this framework, applicants are required to prepare an Environmental Assessment (EA) in cases where the applicant determines that the proposed facility falls within one of certain environmental categories described in the FCC's rules (47 CFR 1.1307), including situations which may affect historical sites listed or eligible for listing in the National Register of Historic Places ("National Register"); and,

Whereas, Section 106 of the National Historic Preservation Act (16 U.S.C. 470 et seq.) ("the Act") requires federal agencies to take into account the effects of their undertakings on historic properties and to afford the Advisory Council on Historic Preservation (Council) a reasonable opportunity to comment; and,

Whereas, Section 800.14(b) of the Council's regulations, "Protection of Historic Properties" (36 CFR 800.14(b)), allows for programmatic agreements to streamline and tailor the Section 106 review process to particular federal programs; and,

Whereas, in August 2000, the Council established a Telecommunications Working Group to provide a forum for the FCC, Industry representatives, State Historic Preservation Officers (SHPOs) and Tribal Historic Preservation Officers (THPOs), and the Council to discuss improved coordination of Section 106 compliance regarding wireless communications projects affecting historic properties; and,

Whereas, the FCC, the Council and the Working Group have developed this Collocation Programmatic Agreement in accordance with 36 CFR 800.14(b) to address the Section 106 review process as it applies to the collocation of antennas (collocation being defined in Stipulation I.A below); and,

Whereas, the FCC encourages collocation of antennas where technically and economically feasible, in order to reduce the need for new tower construction; and,

Whereas, the parties hereto agree that the effects on historic properties of collocations of antennas on towers, buildings and structures are likely to be minimal and not adverse, and that in the cases where an adverse effect might occur, the procedures provided and referred to herein are proper and sufficient, consistent with Section 106, to assure that the FCC will take such effects into account; and

Whereas, the execution of this Nationwide Collocation Programmatic Agreement will streamline the Section 106 review of collocation proposals and thereby reduce the need for the construction of new towers, thereby reducing potential effects on historic properties that would otherwise result from the construction of those unnecessary new towers; and,

Whereas, the FCC and the Council have agreed that these measures should be incorporated into a Nationwide Programmatic Agreement to better manage the Section 106 consultation process and streamline reviews for collocation of antennas; and,

Whereas, since collocations reduce both the need for new tower construction and the potential for adverse effects on historic properties, the parties hereto agree that the terms of this Agreement should be interpreted and implemented wherever possible in ways that encourage collocation; and

Whereas, the parties hereto agree that the procedures described in this Agreement are, with regard to collocations as defined herein, a proper substitute for the FCC's compliance with the Council's rules, in accordance and consistent with Section 106 of the National Historic Preservation Act and its implementing regulations found at 36 CFR part 800; and

Whereas, the FCC has consulted with the National Conference of State Historic Preservation Officers (NCSHPO) and requested the President of NCSHPO to sign this Nationwide Collocation Programmatic Agreement in accordance with 36 CFR Section 800.14(b)(2)(iii); and,

Whereas, the FCC sought comment from Indian tribes and Native Hawaiian Organizations regarding the terms of this Nationwide Programmatic Agreement by letters of January 11, 2001 and February 8, 2001; and,

Whereas, the terms of this Programmatic Agreement do not apply on "tribal lands" as defined under Section 800.16(x) of the Council's regulations, 36 CFR 800.16(x) ("Tribal lands means all lands within the exterior boundaries of any Indian reservation and all dependent Indian communities."); and,

Whereas, the terms of this Programmatic Agreement do not preclude Indian tribes or Native Hawaiian Organizations from consulting directly with the FCC or its licensees, tower companies and applicants for antenna licenses when collocation activities off tribal lands may affect historic properties of religious and cultural significance to Indian tribes or Native Hawaiian organizations; and,

Whereas, the execution and implementation of this Nationwide Collocation Programmatic Agreement will not preclude members of the public from filing complaints with the FCC or the Council regarding adverse effects on historic properties from any existing tower or any activity covered under the terms of this Programmatic Agreement.

Now therefore, the FCC, the Council, and NCSHPO agree that the FCC will meet its Section 106 compliance responsibilities for the collocation of antennas as follows.

Stipulations

The FCC, in coordination with licensees, tower companies and applicants for antenna licenses, will ensure that the following measures are carried out.

I. Definitions

For purposes of this Nationwide Programmatic Agreement, the following definitions apply.

A. ”Collocation” means the mounting or installation of an antenna on an existing tower, building or structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.

B. ”Tower” is any structure built for the sole or primary purpose of supporting FCC–licensed antennas and their associated facilities.

C. ”Substantial increase in the size of the tower” means:

(1) The mounting of the proposed antenna on the tower would increase the existing height of the tower by more than 10%, or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty feet, whichever is greater, except that the mounting of the proposed antenna may exceed the size limits set forth in this paragraph if necessary to avoid interference with existing antennas; or

(2) The mounting of the proposed antenna would involve the installation of more than the standard number of new equipment cabinets for the technology involved, not to exceed four, or more than one new equipment shelter; or

(3) The mounting of the proposed antenna would involve adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than twenty feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater, except that the mounting of the proposed antenna may exceed the size limits set forth in this paragraph if necessary to shelter the antenna from inclement weather or to connect the antenna to the tower via cable; or

(4) The mounting of the proposed antenna would involve excavation outside the current tower site, defined as the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site.

II. Applicability

A. This Nationwide Collocation Programmatic Agreement applies only to the collocation of antennas as defined in Stipulation I.A, above.

B. This Nationwide Collocation Programmatic Agreement does not cover any Section 106 responsibilities that federal agencies other than the FCC may have with regard to the collocation of antennas.

III. Collocation of Antennas on Towers Constructed on or Before March 16, 2001

A. An antenna may be mounted on an existing tower constructed on or before March 16, 2001 without such collocation being reviewed under the consultation process set forth under Subpart B of 36 CFR Part 800, unless:

1. The mounting of the antenna will result in a substantial increase in the size of the tower as defined in Stipulation I.C, above; or

2. The tower has been determined by the FCC to have an effect on one or more historic properties, unless such effect has been found to be not adverse through a no adverse effect finding, or if found to be adverse or potentially adverse, has been resolved, such as through a conditional no adverse effect determination, a Memorandum of Agreement, a programmatic agreement, or otherwise in compliance with Section 106 and Subpart B of 36 CFR Part 800; or

3. The tower is the subject of a pending environmental review or related proceeding before the FCC involving compliance with Section 106 of the National Historic Preservation Act; or

4. The collocation licensee or the owner of the tower has received written or electronic notification that the FCC is in receipt of a complaint from a member of the public, a SHPO or the Council, that the collocation has an adverse effect on one or more historic properties. Any such complaint must be in writing and supported by substantial evidence describing how the effect from the collocation is adverse to the attributes that qualify any affected historic property for eligibility or potential eligibility for the National Register.

IV. Collocation of Antennas on Towers Constructed After March 16, 2001

A. An antenna may be mounted on an existing tower constructed after March 16, 2001 without such collocation being reviewed under the consultation process set forth under Subpart B of 36 CFR Part 800, unless:

1. The Section 106 review process for the tower set forth in 36 CFR Part 800 and any associated environmental reviews required by the FCC have not been completed; or

2. The mounting of the new antenna will result in a substantial increase in the size of the tower as defined in Stipulation I.C, above; or

3. The tower as built or proposed has been determined by the FCC to have an effect on one or more historic properties, unless such effect has been found to be not adverse through a no adverse effect finding, or if found to be adverse or potentially adverse, has been resolved, such as through a conditional no adverse effect determination, a Memorandum of Agreement, a

programmatic agreement, or otherwise in compliance with Section 106 and Subpart B of 36 CFR Part 800; or

4. The collocation licensee or the owner of the tower has received written or electronic notification that the FCC is in receipt of a complaint from a member of the public, a SHPO or the Council, that the collocation has an adverse effect on one or more historic properties. Any such complaint must be in writing and supported by substantial evidence describing how the effect from the collocation is adverse to the attributes that qualify any affected historic property for eligibility or potential eligibility for the National Register.

V. Collocation of Antennas on Buildings and Non–Tower Structures Outside of Historic Districts

A. An antenna may be mounted on a building or non-tower structure without such collocation being reviewed under the consultation process set forth under Subpart B of 36 CFR Part 800, unless:

1. The building or structure is over 45 years old;[1] or

2. The building or structure is inside the boundary of a historic district, or if the antenna is visible from the ground level of the historic district, the building or structure is within 250 feet of the boundary of the historic district; or

3. The building or non-tower structure is a designated National Historic Landmark, or listed in or eligible for listing in the National Register of Historic Places based upon the review of the licensee, tower company or applicant for an antenna license; or

4. The collocation licensee or the owner of the tower has received written or electronic notification that the FCC is in receipt of a complaint from a member of the public, a SHPO or the Council, that the collocation has an adverse effect on one or more historic properties. Any such complaint must be in writing and supported by substantial evidence describing how the effect from the collocation is adverse to the attributes that qualify any affected historic property for eligibility or potential eligibility for the National Register.

B. Subsequent to the collocation of an antenna, should the SHPO/THPO or Council determine that the collocation of the antenna or its associated equipment installed under the terms of Stipulation V has resulted in an adverse effect on historic properties, the SHPO/THPO or Council may notify the FCC accordingly. The FCC shall comply with the requirements of Section 106 and 36 CFR Part 800 for this particular collocation.

VI. Reservation of Rights

Neither execution of this Agreement, nor implementation of or compliance with any term herein shall operate in any way as a waiver by any party hereto, or by any person or entity complying herewith or affected hereby, of a right to assert in any court of law any claim, argument or defense regarding the validity or interpretation of any provision of the National Historic Preservation Act (16 U.S.C. 470 et seq.) or its implementing regulations contained in 36 CFR Part 800.

VII. Monitoring

A. FCC licensees shall retain records of the placement of all licensed antennas, including collocations subject to this Nationwide Programmatic Agreement, consistent with FCC rules and procedures.

B. The Council will forward to the FCC and the relevant SHPO any written objections it receives from members of the public regarding a collocation activity or general compliance with the provisions of this Nationwide Programmatic Agreement within thirty (30) days following receipt of the written objection. The FCC will forward a copy of the written objection to the appropriate licensee or tower owner.

VIII. Amendments

If any signatory to this Nationwide Collocation Programmatic Agreement believes that this Agreement should be amended, that signatory may at any time propose amendments, whereupon the signatories will consult to consider the amendments. This agreement may be amended only upon the written concurrence of the signatories.

IX. Termination

A. If the FCC determines that it cannot implement the terms of this Nationwide Collocation Programmatic Agreement, or if the FCC, NCSHPO or the Council determines that the Programmatic Agreement is not being properly implemented by the parties to this Programmatic Agreement, the FCC, NCSHPO or the Council may propose to the other signatories that the Programmatic Agreement be terminated.

B. The party proposing to terminate the Programmatic Agreement shall notify the other signatories in writing, explaining the reasons for the proposed termination and the particulars of the asserted improper implementation. Such party also shall afford the other signatories a reasonable period of time of no less than thirty (30) days to consult and remedy the problems resulting in improper implementation. Upon receipt of such notice, the parties shall consult with each other and notify and consult with other entities that are either involved in such implementation or that would be substantially affected by termination of this Agreement, and seek alternatives to termination. Should the consultation fail to produce within the original remedy period or any extension, a reasonable alternative to termination, a resolution of the stated problems, or convincing evidence of substantial implementation of this Agreement in accordance with its terms, this Programmatic Agreement shall be terminated thirty days after notice of termination is served on all parties and published in the Federal Register.

C. In the event that the Programmatic Agreement is terminated, the FCC shall advise its licensees and tower construction companies of the termination and of the need to comply with any applicable Section 106 requirements on a case-by-case basis for collocation activities.

X. Annual Meeting of the Signatories

The signatories to this Nationwide Collocation Programmatic Agreement will meet on or about September 10, 2001, and on or about September 10 in each subsequent year, to discuss the effectiveness of this Agreement, including any issues related to improper implementation, and to discuss any potential amendments that would improve the effectiveness of this Agreement.

XI. Duration of the Programmatic Agreement

This Programmatic Agreement for collocation shall remain in force unless the Programmatic Agreement is terminated or superseded by a comprehensive Programmatic Agreement for wireless communications antennas.

Execution of this Nationwide Programmatic Agreement by the FCC, NCSHPO and the Council, and implementation of its terms, evidence that the FCC has afforded the Council an opportunity to comment on the collocation as described herein of antennas covered under the FCC's rules, and that the FCC has taken into account the effects of these collocations on historic properties in accordance with Section 106 of the National Historic Preservation Act and its implementing regulations, 36 CFR Part 800.

Federal Communications Commission

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Date: .....

Advisory Council on Historic Preservation

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Date: .....

National Conference of State Historic Preservation Officers

.....

Date: .....

Credits

[70 FR 578, Jan. 4, 2005]

SOURCE: 56 FR 57598, Nov. 13, 1991; 57 FR 187, Jan. 3, 1992; 58 FR 27473, May 10, 1993; 59 FR 22985, May 4, 1994; 61 FR 45618, Aug. 29, 1996; 61 FR 46561, Sept. 4, 1996; 61 FR 52899, Oct. 9, 1996; 62 FR 37422, July 11, 1997; 63 FR 67429, Dec. 7, 1998; 63 FR 71036, Dec. 23, 1998; 64 FR 63251, Nov. 19, 1999; 65 FR 10720, Feb. 29, 2000; 65 FR 19684, April 12, 2000; 65 FR 31281, May 17, 2000; 69 FR 77938, Dec. 29, 2004; 71 FR 26251, May 4, 2006; 74 FR 39227, Aug. 6, 2009; 75 FR 9797, March 4, 2010; 76 FR 43203, July 20, 2011; 77 FR 71137, Nov. 29, 2012; 78 FR 10100, Feb. 13, 2013; 78 FR 15622, March 12, 2013; 78 FR 41321, July 10, 2013; 78 FR 50254, Aug. 16, 2013; 79 FR 48528, Aug. 15, 2014; 80 FR 1268, Jan. 8, 2015, unless otherwise noted.

AUTHORITY: 15 U.S.C. 79, et seq.; 47 U.S.C. 151, 154(i), 154(j), 155, 157, 160, 201, 225, 227, 303, 309, 332, 1403,

1451, 1452, and 1455.

Current through May 28, 2015; 80 FR 30382.

Footnotes

1 Suitable methods for determining the age of a building include, but are not limited to: (1) obtaining the opinion of a consultant who meets the Secretary of Interior's Professional Qualifications Standards (36 CFR Part 61) or (2) consulting public records.

End of Document

Code of Federal Regulations
Title 47. Telecommunication
Chapter I. Federal Communications Commission (Refs & Annos)
Subchapter A. General
Part 12. Resiliency, Redundancy and Reliability of Communications (Refs & Annos)

47 C.F.R. § 12.4

§ 12.4 Reliability of covered 911 service providers.

Effective: February 27, 2015

Currentness

(a) Definitions. Terms in this section shall have the following meanings:

(1) Aggregation point. A point at which network monitoring data for a 911 service area is collected and routed to a network operations center (NOC) or other location for monitoring and analyzing network status and performance.

(2) Certification. An attestation by a certifying official, under penalty of perjury, that a covered 911 service provider:

(i) Has satisfied the obligations of paragraph (c) of this section.

(ii) Has adequate internal controls to bring material information regarding network architecture, operations, and maintenance to the certifying official's attention.

(iii) Has made the certifying official aware of all material information reasonably necessary to complete the certification.

(iv) The term "certification" shall include both an annual reliability certification under paragraph (c) of this section and an initial reliability certification under paragraph (d)(1) of this section, to the extent provided under paragraph (d)(1) of this section.

(3) Certifying official. A corporate officer of a covered 911 service provider with supervisory and budgetary authority over network operations in all relevant service areas.

(4) Covered 911 service provider.

(i) Any entity that:

(A) Provides 911, E911, or NG911 capabilities such as call routing, automatic location information (ALI), automatic number identification (ANI), or the functional equivalent of those capabilities, directly to a public safety answering point (PSAP), statewide default answering point, or appropriate local emergency authority as defined in §§ 64.3000(b) and 20.3 of this chapter; and/or

(B) Operates one or more central offices that directly serve a PSAP. For purposes of this section, a central office directly serves a PSAP if it hosts a selective router or ALI/ANI database, provides equivalent NG911 capabilities, or is the last service-provider facility through which a 911 trunk or administrative line passes before connecting to a PSAP.

(ii) The term "covered 911 service provider" shall not include any entity that:

(A) Constitutes a PSAP or governmental authority to the extent that it provides 911 capabilities; or

(B) Offers the capability to originate 911 calls where another service provider delivers those calls and associated number or location information to the appropriate PSAP.

(5) Critical 911 circuits. 911 facilities that originate at a selective router or its functional equivalent and terminate in the central office that serves the PSAP(s) to which the selective router or its functional equivalent delivers 911 calls, including all equipment in the serving central office necessary for the delivery of 911 calls to the PSAP(s). Critical 911 circuits also include ALI and ANI facilities that originate at the ALI or ANI database and terminate in the central office that serves the PSAP(s) to which the ALI or ANI databases deliver 911 caller information, including all equipment in the serving central office necessary for the delivery of such information to the PSAP(s).

(6) Diversity audit. A periodic analysis of the geographic routing of network components to determine whether they are physically diverse. Diversity audits may be performed through manual or automated means, or through a review of paper or electronic records, as long as they reflect whether critical 911 circuits are physically diverse.

(7) Monitoring links. Facilities that collect and transmit network monitoring data to a NOC or other location for monitoring and analyzing network status and performance.

(8) Physically diverse. Circuits or equivalent data paths are Physically Diverse if they provide more than one physical

route between end points with no common points where a single failure at that point would cause both circuits to fail. Circuits that share a common segment such as a fiber-optic cable or circuit board are not Physically diverse even if they are logically diverse for purposes of transmitting data.

(9) 911 service area. The metropolitan area or geographic region in which a covered 911 service provider operates a selective router or the functional equivalent to route 911 calls to the geographically appropriate PSAP.

(10) Selective router. A 911 network component that selects the appropriate destination PSAP for each 911 call based on the location of the caller.

(11) Tagging. An inventory management process whereby critical 911 circuits are labeled in circuit inventory databases to make it less likely that circuit rearrangements will compromise diversity. A covered 911 service provider may use any system it wishes to tag circuits so long as it tracks whether critical 911 circuits are physically diverse and identifies changes that would compromise such diversity.

(b) Provision of reliable 911 service. All covered 911 service providers shall take reasonable measures to provide reliable 911 service with respect to circuit diversity, central-office backup power, and diverse network monitoring. Performance of the elements of the certification set forth in paragraphs (c)(1)(i), (c)(2)(i), and (c)(3)(i) of this section shall be deemed to satisfy the requirements of this paragraph. If a covered 911 service provider cannot certify that it has performed a given element, the Commission may determine that such provider nevertheless satisfies the requirements of this paragraph based upon a showing in accordance with paragraph (c) of this section that it is taking alternative measures with respect to that element that are reasonably sufficient to mitigate the risk of failure, or that one or more certification elements are not applicable to its network.

(c) Annual reliability certification. One year after the initial reliability certification described in paragraph (d)(1) of this section and every year thereafter, a certifying official of every covered 911 service provider shall submit a certification to the Commission as follows.

(1) Circuit auditing.

(i) A covered 911 service provider shall certify whether it has, within the past year:

(A) Conducted diversity audits of critical 911 circuits or equivalent data paths to any PSAP served;

(B) Tagged such critical 911 circuits to reduce the probability of inadvertent loss of diversity in the period between audits; and

(C) Eliminated all single points of failure in critical 911 circuits or equivalent data paths serving each PSAP.

(ii) If a covered 911 service provider does not conform with the elements in paragraph (c)(1)(i)(C) of this section with respect to the 911 service provided to one or more PSAPs, it must certify with respect to each such PSAP:

(A) Whether it has taken alternative measures to mitigate the risk of critical 911 circuits that are not physically diverse or is taking steps to remediate any issues that it has identified with respect to 911 service to the PSAP, in which case it shall provide a brief explanation of such alternative measures or such remediation steps, the date by which it anticipates such remediation will be completed, and why it believes those measures are reasonably sufficient to mitigate such risk; or

(B) Whether it believes that one or more of the requirements of this paragraph are not applicable to its network, in which case it shall provide a brief explanation of why it believes any such requirement does not apply.

(2) Backup power.

(i) With respect to any central office it operates that directly serves a PSAP, a covered 911 service provider shall certify whether it:

(A) Provisions backup power through fixed generators, portable generators, batteries, fuel cells, or a combination of these or other such sources to maintain full-service functionality, including network monitoring capabilities, for at least 24 hours at full office load or, if the central office hosts a selective router, at least 72 hours at full office load; provided, however, that any such portable generators shall be readily available within the time it takes the batteries to drain, notwithstanding potential demand for such generators elsewhere in the service provider's network.

(B) Tests and maintains all backup power equipment in such central offices in accordance with the manufacturer's specifications;

(C) Designs backup generators in such central offices for fully automatic operation and for ease of manual operation, when required;

(D) Designs, installs, and maintains each generator in any central office that is served by more than one backup generator as a stand-alone unit that does not depend on the operation of another generator for proper functioning.

(ii) If a covered 911 service provider does not conform with all of the elements in paragraph (c)(2)(i) of this section, it

must certify with respect to each such central office:

(A) Whether it has taken alternative measures to mitigate the risk of a loss of service in that office due to a loss of power or is taking steps to remediate any issues that it has identified with respect to backup power in that office, in which case it shall provide a brief explanation of such alternative measures or such remediation steps, the date by which it anticipates such remediation will be completed, and why it believes those measures are reasonably sufficient to mitigate such risk; or

(B) Whether it believes that one or more of the requirements of this paragraph are not applicable to its network, in which case it shall provide a brief explanation of why it believes any such requirement does not apply.

(3) Network monitoring.

(i) A covered 911 service provider shall certify whether it has, within the past year:

(A) Conducted diversity audits of the aggregation points that it uses to gather network monitoring data in each 911 service area;

(B) Conducted diversity audits of monitoring links between aggregation points and NOCs for each 911 service area in which it operates; and

(C) Implemented physically diverse aggregation points for network monitoring data in each 911 service area and physically diverse monitoring links from such aggregation points to at least one NOC.

(ii) If a Covered 911 service provider does not conform with all of the elements in paragraph (c)(3)(i)(C) of this section, it must certify with respect to each such 911 service area:

(A) Whether it has taken alternative measures to mitigate the risk of network monitoring facilities that are not physically diverse or is taking steps to remediate any issues that it has identified with respect to diverse network monitoring in that 911 service area, in which case it shall provide a brief explanation of such alternative measures or such remediation steps, the date by which it anticipates such remediation will be completed, and why it believes those measures are reasonably sufficient to mitigate such risk; or

(B) Whether it believes that one or more of the requirements of this paragraph are not applicable to its network, in which case it shall provide a brief explanation of why it believes any such requirement does not apply.

(d) Other matters.

(1) Initial reliability certification. One year after October 15, 2014, a certifying official of every covered 911 service provider shall certify to the Commission that it has made substantial progress toward meeting the standards of the annual reliability certification described in paragraph (c) of this section. Substantial progress in each element of the certification shall be defined as compliance with standards of the full certification in at least 50 percent of the covered 911 service provider's critical 911 circuits, central offices that directly serve PSAPs, and independently monitored 911 service areas.

(2) Confidential treatment.

(i) The fact of filing or not filing an annual reliability certification or initial reliability certification and the responses on the face of such certification forms shall not be treated as confidential.

(ii) Information submitted with or in addition to such certifications shall be presumed confidential to the extent that it consists of descriptions and documentation of alternative measures to mitigate the risks of nonconformance with certification elements, information detailing specific corrective actions taken with respect to certification elements, or supplemental information requested by the Commission or Bureau with respect to a certification.

(3) Record retention. A covered 911 service provider shall retain records supporting the responses in a certification for two years from the date of such certification, and shall make such records available to the Commission upon request. To the extent that a covered 911 service provider maintains records in electronic format, records supporting a certification hereunder shall be maintained and supplied in an electronic format.

(i) With respect to diversity audits of critical 911 circuits, such records shall include, at a minimum, audit records separately addressing each such circuit, any internal report(s) generated as a result of such audits, records of actions taken pursuant to the audit results, and records regarding any alternative measures taken to mitigate the risk of critical 911 circuits that are not physically diverse.

(ii) With respect to backup power at central offices, such records shall include, at a minimum, records regarding the nature and extent of backup power at each central office that directly serves a PSAP, testing and maintenance records for backup power equipment in each such central office, and records regarding any alternative measures taken to mitigate the risk of insufficient backup power.

(iii) With respect to network monitoring, such records shall include, at a minimum, records of diversity audits of monitoring links, any internal report(s) generated as a result of such audits, records of actions taken pursuant to the audit results, and records regarding any alternative measures taken to mitigate the risk of aggregation points and/or monitoring links that are not physically diverse.

Credits

[79 FR 3131, Jan. 17, 2014; 79 FR 61785, Oct. 15, 2014; 80 FR 10619, Feb. 27, 2015]

SOURCE: 72 FR 37673, July 11, 2007; 79 FR 3131, Jan. 17, 2014, unless otherwise noted.

AUTHORITY: Sections 1, 4(i), 4(j), 4(o), 5(c), 218, 219, 301, 303(g), 303(j), 303(r), 332, 403, 621(b)(3), and 621(d) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 154(o), 155(c), 218, 219, 301, 303(g), 303(j), 303(r), 332, 403, 621(b)(3), and 621(d), unless otherwise noted.

Current through May 28, 2015; 80 FR 30382.

End of Document

Code of Federal Regulations
Title 47. Telecommunication
Chapter I. Federal Communications Commission (Refs & Annos)
Subchapter A. General
Part 17. Construction, Marking, and Lighting of Antenna Structures (Refs & Annos)
Subpart A. General Information

47 C.F.R. § 17.2

§ 17.2 Definitions.

Effective: October 24, 2014

Currentness

(a) Antenna structure. The term antenna structure means a structure that is constructed or used to transmit radio energy, or that is constructed or used for the primary purpose of supporting antennas to transmit and/or receive radio energy, and any antennas and other appurtenances mounted thereon, from the time construction of the supporting structure begins until such time as the supporting structure is dismantled.

(b) Antenna farm area. A geographical location, with established boundaries, designated by the Federal Communications Commission, in which antenna structures with a common impact on aviation may be grouped.

(c) Antenna structure owner. For the purposes of this part, an antenna structure owner is the individual or entity vested with ownership, equitable ownership, dominion, or title to the antenna structure that is constructed or used to transmit radio energy, or the underlying antenna structure that supports or is intended to support antennas and other appurtenances. Notwithstanding any agreements made between the owner and any entity designated by the owner to maintain the antenna structure, the owner is ultimately responsible for compliance with the requirements of this part.

(d) Antenna structure registration number. A unique number, issued by the Commission during the registration process, which identifies an antenna structure. Once obtained, this number must be used in all filings related to this structure.

Credits

[32 FR 8813, June 21, 1967, and 32 FR 11268, Aug. 3, 1967, as amended at 39 FR 26157, July 17, 1974; 61 FR 4362, Feb. 6, 1996; 79 FR 56984, Sept. 24, 2014]

AUTHORITY: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 309, 48 Stat. 1081, 1085 as amended; 47 U.S.C. 301, 309, unless otherwise noted.

Current through May 28, 2015; 80 FR 30382.

End of Document

Code of Federal Regulations
Title 47. Telecommunication
Chapter I. Federal Communications Commission (Refs & Annos)
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Part 17. Construction, Marking, and Lighting of Antenna Structures (Refs & Annos)
Subpart A. General Information

47 C.F.R. § 17.4

§ 17.4 Antenna structure registration.

Effective: February 9, 2015

Currentness

(a) The owner of any proposed or existing antenna structure that requires notice of proposed construction to the Federal Aviation Administration (FAA) due to physical obstruction must register the structure with the Commission. (See § 17.7 for FAA notification requirements.) This includes those structures used as part of stations licensed by the Commission for the transmission of radio energy, or to be used as part of a cable television head end system. If a Federal Government antenna structure is to be used by a Commission licensee, the structure must be registered with the Commission. If the FAA exempts an antenna structure from notification, it is exempt from the requirement that it register with the Commission. (See § 17.7(e) for exemptions to FAA notification requirements.)

(1) For a proposed antenna structure or alteration of an existing antenna structure, the owner must register the structure prior to construction or alteration.

(2) For a structure that did not originally fall under the definition of "antenna structure," the owner must register the structure prior to hosting a Commission licensee.

(b) Except as provided in paragraph (e) of this section, each owner of an antenna structure described in paragraph (a) of this section must file FCC Form 854 with the Commission. Additionally, each owner of a proposed structure referred to in paragraph (a) of this section must submit a valid FAA determination of "no hazard." In order to be considered valid by the Commission, the FAA determination of "no hazard" must not have expired prior to the date on which FCC Form 854 is received by the Commission. The height of the structure will be the highest point of the structure including any obstruction lighting or lightning arrester. If an antenna structure is not required to be registered under paragraph (a) of this section and it is voluntarily registered with the Commission after the effective date of this rule, the registrant must note on FCC Form 854 that the registration is voluntary. Voluntarily registered antenna structures are not subject to the lighting and marking requirements contained in this part.

(c) Each prospective applicant must complete the environmental notification process described in this paragraph, except as specified in paragraph (c)(1) of this section.

(1) Exceptions from the environmental notification process. Completion of the environmental notification process is not required when FCC Form 854 is submitted solely for the following purposes:

(i) For notification only, such as to report a change in ownership or contact information, or the dismantlement of an antenna structure;

(ii) For a reduction in height of an antenna structure or an increase in height that does not constitute a substantial increase in size as defined in paragraph I(C)(1)–(3) of Appendix B to part 1 of this chapter, provided that there is no construction or excavation more than 30 feet beyond the existing antenna structure property;

(iii) For removal of lighting from an antenna structure or adoption of a more preferred or equally preferred lighting style. For this purpose lighting styles are ranked as follows (with the most preferred lighting style listed first and the least preferred listed last): no lights; FAA Lighting Styles that do not involve use of red steady lights; and FAA Lighting Styles that involve use of red steady lights. A complete description of each FAA Lighting Style and the manner in which it is to be deployed can be found in the current version of FAA, U.S. Dept. of Transportation, Advisory Circular: Obstruction Marking and Lighting, AC 70/7460;

(iv) For replacement of an existing antenna structure at the same geographic location that does not require an Environmental Assessment (EA) under § 1.1307(a) through (d) of this chapter, provided the new structure will not use a less preferred lighting style, there will be no substantial increase in size as defined in paragraph I(C)(1)–(3) of Appendix B to part 1 of this chapter, and there will be no construction or excavation more than 30 feet beyond the existing antenna structure property;

(v) For any other change that does not alter the physical structure, lighting, or geographic location of an existing structure;

(vi) For construction, modification, or replacement of an antenna structure on Federal land where another Federal agency has assumed responsibility for evaluating the potentially significant environmental effect of the proposed antenna structure on the quality of the human environment and for invoking any required environmental impact statement process, or for any other structure where another Federal agency has assumed such responsibilities pursuant to a written agreement with the Commission (see § 1.1311(e) of this chapter); or

(vii) For the construction or deployment of an antenna structure that will:

(A) Be in place for no more than 60 days,

(B) Requires notice of construction to the FAA,

(C) Does not require marking or lighting under FAA regulations,

(D) Will be less than 200 feet in height above ground level, and

(E) Will either involve no excavation or involve excavation only where the depth of previous disturbance exceeds the proposed construction depth (excluding footings and other anchoring mechanisms) by at least two feet. An applicant that relies on this exception must wait 30 days after removal of the antenna structure before relying on this exception to deploy another antenna structure covering substantially the same service area.

(2) Commencement of the environmental notification process. The prospective applicant shall commence the environmental notification process by filing information about the proposed antenna structure with the Commission. This information shall include, at a minimum, all of the information required on FCC Form 854 regarding ownership and contact information, geographic location, and height, as well as the type of structure and anticipated lighting. The Wireless Telecommunications Bureau may utilize a partially completed FCC Form 854 to collect this information.

(3) Local notice. The prospective applicant must provide local notice of the proposed new antenna structure or modification of an existing antenna structure through publication in a newspaper of general circulation or other appropriate means, such as through the public notification provisions of the relevant local zoning process. The local notice shall contain all of the descriptive information as to geographic location, configuration, height and anticipated lighting specifications reflected in the submission required pursuant to paragraph (c)(2) of this section. It must also provide information as to the procedure for interested persons to file Requests for environmental processing pursuant to §§ 1.1307(c) and 1.1313(b) of this chapter, including any assigned file number, and state that such Requests may only raise environmental concerns.

(4) National notice. On or after the local notice date provided by the prospective applicant, the Commission shall post notification of the proposed construction on its Web site. This posting shall include the information contained in the initial filing with the Commission or a link to such information. The posting shall remain on the Commission's Web site for a period of 30 days.

(5) Requests for environmental processing. Any Request filed by an interested person pursuant to §§ 1.1307(c) and 1.1313(b) of this chapter must be received by the Commission no later than 30 days after the proposed antenna structure goes on notice pursuant to paragraph (c)(4) of this section. The Wireless Telecommunications Bureau shall establish by public notice the process for filing Requests for environmental processing and responsive pleadings consistent with the following provisions.

(i) Service and pleading cycle. The interested person or entity shall serve a copy of its Request on the prospective ASR applicant pursuant to § 1.47 of this chapter. Oppositions may be filed no later than 10 days after the time for filing Requests has expired. Replies to oppositions may be filed no later than 5 days after the time for filing oppositions has

expired. Oppositions shall be served upon the Requester, and replies shall be served upon the prospective applicant.

(ii) Content. An Environmental Request must state why the interested person or entity believes that the proposed antenna structure or physical modification of an existing antenna structure may have a significant impact on the quality of the human environment for which an Environmental Assessment must be considered by the Commission as required by § 1.1307 of this chapter, or why an Environmental Assessment submitted by the prospective ASR applicant does not adequately evaluate the potentially significant environmental effects of the proposal. The Request must be submitted as a written petition filed either electronically or by hard copy setting forth in detail the reasons supporting Requester's contentions.

(6) Amendments. The prospective applicant must file an amendment to report any substantial change in the information provided to the Commission. An amendment will not require further local or national notice if the only reported change is a reduction in the height of the proposed new or modified antenna structure; if proposed lighting is removed or changed to a more preferred or equally preferred lighting style as set forth in paragraph (c)(1)(iii) of this section; or if the amendment reports only administrative changes that are not subject to the requirements specified in this paragraph. All other changes to the physical structure, lighting, or geographic location data for a proposed registered antenna structure require additional local and national notice and a new period for filing Requests pursuant to paragraphs (c)(3), (c)(4), and (c)(5) of this section.

(7) Environmental Assessments. If an Environmental Assessment (EA) is required under § 1.1307 of this chapter, the antenna structure registration applicant shall attach the EA to its environmental submission, regardless of any requirement that the EA also be attached to an associated service-specific license or construction permit application. The contents of an EA are described in §§ 1.1308 and 1.1311 of this chapter. The EA may be provided either with the initial environmental submission or as an amendment. If the EA is submitted as an amendment, the Commission shall post notification on its Web site for another 30 days pursuant to paragraph (c)(4) of this section and accept additional Requests pursuant to paragraph (c)(5) of this section. However, additional local notice pursuant to paragraph (c)(3) of this section shall not be required unless information has changed pursuant to paragraph (c)(6) of this section. The applicant shall serve a copy of the EA upon any party that has previously filed a Request pursuant to paragraph (c)(5) of this section.

(8) Disposition. The processing Bureau shall resolve all environmental issues, in accordance with the environmental regulations (47 CFR 1.1301 through 1.1319) specified in part 1 of this chapter, before the tower owner, or the first tenant licensee acting on behalf of the owner, may complete the antenna structure registration application. In a case where no EA is submitted, the Bureau shall notify the applicant whether an EA is required under § 1.1307(c) or (d) of this chapter. In a case where an EA is submitted, the Bureau shall either grant a Finding of No Significant Impact (FONSI) or notify the applicant that further environmental processing is required pursuant to § 1.1308 of this chapter. Upon filing the completed antenna structure registration application, the applicant shall certify that the construction will not have a significant environmental impact, unless an Environmental Impact Statement is prepared pursuant to § 1.1314 of this chapter.

(9) Transition rule. An antenna structure registration application that is pending with the Commission as of the effective date of this paragraph (c) shall not be required to complete the environmental notification process set forth in this paragraph. The Commission will publish a document in the Federal Register announcing the effective date. However, if such an application is amended in a manner that would require additional notice pursuant to paragraph (c)(6) of this section, then such notice shall be required.

(d) If a final FAA determination of "no hazard" is not submitted along with FCC Form 854, processing of the registration may be delayed or disapproved.

(e) If the owner of the antenna structure cannot file FCC Form 854 because it is subject to a denial of Federal benefits under the Anti–Drug Abuse Act of 1988, 21 U.S.C. 862, the first tenant licensee authorized to locate on the structure (excluding tenants that no longer occupy the structure) must register the structure using FCC Form 854, and provide a copy of the Antenna Structure Registration (FCC Form 854R) to the owner. The owner remains responsible for providing to all tenant licensees and permittees notification that the structure has been registered, consistent with paragraph (f) of this section, and for posting the registration number as required by paragraph (g) of this section.

(f) The Commission shall issue to the registrant FCC Form 854R, Antenna Structure Registration, which assigns a unique Antenna Structure Registration Number. The antenna structure owner shall immediately provide to all tenant licensees and permittees notification that the structure has been registered, along with either a copy of Form 854R or the Antenna Structure Registration Number and a link to the FCC antenna structure Web site: http://wireless.fcc.gov/antenna/. This notification may be done electronically or via paper mail.

(g) Except as described in paragraph (h) of this section, the Antenna Structure Registration Number must be displayed so that it is conspicuously visible and legible from the publicly accessible area nearest the base of the antenna structure along the publicly accessible roadway or path. Where an antenna structure is surrounded by a perimeter fence, or where the point of access includes an access gate, the Antenna Structure Registration Number should be posted on the perimeter fence or access gate. Where multiple antenna structures having separate Antenna Structure Registration Numbers are located within a single fenced area, the Antenna Structure Registration Numbers must be posted both on the perimeter fence or access gate and near the base of each antenna structure. If the base of the antenna structure has more than one point of access, the Antenna Structure Registration Number must be posted so that it is visible at the publicly accessible area nearest each such point of access. Materials used to display the Antenna Structure Registration Number must be weather-resistant and of sufficient size to be easily seen where posted.

(h) The owner is not required to post the Antenna Structure Registration Number in cases where a federal, state, or local government entity provides written notice to the owner that such a posting would detract from the appearance of a historic landmark. In this case, the owner must make the Antenna Structure Registration Number available to representatives of the Commission, the FAA, and the general public upon reasonable demand.

(i) Absent Commission specification, the painting and lighting specifications recommended by the FAA are mandatory (see § 17.23). However, the Commission may specify painting and/or lighting requirements for each antenna structure registration in addition to or different from those specified by the FAA.

(j) Any change or correction in the overall height of one foot or greater or coordinates of one second or greater in longitude or latitude of a registered antenna structure requires prior approval from the FAA and modification of the existing registration with the Commission.

(k) Any change in the marking and lighting that varies from the specifications described on any antenna structure registration requires prior approval from the FAA and the Commission.

Credits

[32 FR 11268, Aug. 3, 1967, as amended at 34 FR 6481, Apr. 15, 1969; 42 FR 54823, Oct. 11, 1977; 46 FR 10916, Feb. 5, 1981; 48 FR 51917, Nov. 15, 1983; 61 FR 4362, Feb. 6, 1996; 77 FR 3953, Jan. 26, 2012; 77 FR 36177, June 18, 2012; 79 FR 56985, Sept. 24, 2014; 80 FR 1270, Jan. 8, 2015]

AUTHORITY: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 309, 48 Stat. 1081, 1085 as amended; 47 U.S.C. 301, 309, unless otherwise noted.

Notes of Decisions (4)

Current through May 28, 2015; 80 FR 30382.

End of Document

Code of Federal Regulations
Title 47. Telecommunication
Chapter I. Federal Communications Commission (Refs & Annos)
Subchapter C. Broadcast Radio Services
Part 76. Multichannel Video and Cable Television Service (Refs & Annos)
Subpart D. Carriage of Television Broadcast Signals

47 C.F.R. § 76.56

§ 76.56 Signal carriage obligations.

Effective: June 22, 2012

Currentness

(a) Carriage of qualified noncommercial educational stations. A cable television system shall carry qualified NCE television stations in accordance with the following provisions:

(1) Each cable operator shall carry on its cable television system any qualified local NCE television station requesting carriage, except that

(i) Systems with 12 or fewer usable activated channels, as defined in § 76.6(oo), shall be required to carry the signal of one such station;

(ii) Systems with 13 to 36 usable activated channels, as defined in § 76.5(oo), shall be required to carry at least one qualified local NCE station, but not more than three such stations; and

(iii) Systems with more than 36 usable activated channels shall be required to carry the signals of all qualified local NCE television stations requesting carriage, but in any event at least three such signals; however a cable system with more than 36 channels shall not be required to carry an additional qualified local NCE station whose programming substantially duplicates the programming of another qualified local NCE station being carried on the system.

Note: For purposes of this paragraph, a station will be deemed to "substantially duplicate" the programming of another station if it broadcasts the same programming, simultaneous or non-simultaneous, for more than 50 percent of prime time, as defined in § 76.5(n), and more than 50 percent outside of prime time over a three-month period.

(2)(i) In the case of a cable system with 12 or fewer channels that operates beyond the presence of any qualified local NCE stations, the cable operator shall import one qualified NCE television station.

(ii) A cable system with between 13 and 36 channels that operates beyond the presence of any qualified local NCE stations, the cable operator shall import at least one qualified NCE television station.

(3) A cable system with 12 or fewer usable activated channels shall not be required to remove any programming service provided to subscribers as of March 29, 1990, to satisfy these requirements, except that the first available channel must be used to satisfy these requirements.

(4) A cable system with 13 to 36 usable activated channels which carries the signal of a qualified local NCE station affiliated with a State public television network shall not be required to carry more than one qualified local NCE station affiliated with such network, if the programming of such additional stations substantially duplicates, as defined in the note in paragraph (a)(1) of this section, the programming of a qualified local NCE television station receiving carriage.

(5) Notwithstanding the requirements of paragraph (a)(1) of this section, all cable operators shall continue to provide carriage to all qualified local NCE television stations whose signals were carried on their systems as of March 29, 1990. In the case of a cable system that is required to import a distance qualified NCE signal, and such system imported the signal of a qualified NCE station as of March 29, 1990, such cable system shall continue to import such signal until such time as a qualified local NCE signal is available to the cable system. This requirements may be waived with respect to a particular cable operator and a particular NCE station, upon the written consent of the cable operator and the station.

(b) Carriage of local commercial television stations. Effective June 2, 1993, a cable television system shall carry local commercial broadcast television stations in accordance with the following provisions:

(1) A cable system with 12 or fewer usable activated channels, as defined in § 76.5(oo), shall carry the signals of at least three qualified local commercial television stations, except that if such system serves 300 or fewer subscribers it shall not be subject to these requirements as long as it does not delete from carriage the signal of a broadcast television station which was carried on that system on October 5, 1992.

(2) A cable system with more than 12 usable activated channels, as defined in § 76.5(oo), shall carry local commercial television stations up to one-third of the aggregate number of usable activated channels of such system.

(3) If there are not enough local commercial television stations to fill the channels set aside under paragraphs (b)(1) and (b)(2) of this section, a cable operator of a system with 35 or fewer usable activated channels, as defined in § 76.5(oo), shall, if such stations exist, carry one qualified low power television station and a cable system with more than 35 usable activated channels shall carry two qualified low power stations.

(4) Whenever the number of local commercial television stations exceeds the maximum number of signals a cable system is required to carry under paragraph (b)(1) or (b)(2) of this section, the cable operator shall have discretion in

selecting which such stations shall be carried on its cable system, except that

(i) Under no circumstances shall a cable operator carry a qualified low power station in lieu of a local commercial television station; and

(ii) If the cable operator elects to carry an affiliate of a broadcast network, as defined in § 76.55(f), such cable operator shall carry the affiliate of such broadcast network whose community of license reference point, as defined in § 76.53, is closest to the principal headend, as defined in § 76.5(pp), of the cable system.

(5) A cable operator is not required to carry the signal of any local commercial television station that substantially duplicates the signal of another local commercial television station that is carried on its cable system, or to carry the signals of more than one local commercial television station affiliated with a particular broadcast network, as defined in § 76.55(f). However, if a cable operator declines to carry duplicating signals, such cable operator shall carry the station whose community of license reference point, as defined in § 76.53, is closest to the principal headend of the cable system. For purposes of this paragraph, substantially duplicates means that a station regularly simultaneously broadcasts the identical programming as another station for more than 50 percent of the broadcast week. For purposes of this definition, only identical episodes of a television series are considered duplicative and commercial inserts are excluded from the comparison. When the stations being compared are licensed to communities in different time zones, programming aired by a station within one hour of the identical program being broadcast by another station will be considered duplicative.

(6) [Reserved]

(7) A local commercial television station carried to fulfill the requirements of this paragraph, which subsequently elects retransmission consent pursuant to § 76.64, shall continue to be carried by the cable system until the effective date of such retransmission consent election.

(c) Use of public, educational, or governmental (PEG) channels. A cable operator required to carry more than one signal of a qualified low power station or to add qualified local NCE stations in fulfillment of these must-carry obligations may do so, subject to approval by the franchising authority pursuant to Section 611 of the Communications Act of 1934, as amended, by placing such additional station on public, educational, or governmental channels not in use for their designated purposes.

(d) Availability of signals.

(1) Local commercial television stations carried in fulfillment of the requirements of this section shall be provided to every subscriber of a cable system. Such signals shall be viewable via cable on all television receivers of a subscriber which are connected to a cable system by a cable operator or for which a cable operator provides a connection.

(2) Qualified local NCE television stations carried in fulfillment of the carriage obligations of a cable operator under this section shall be available to every subscriber as part of the cable system's lowest priced service tier that includes the retransmission of local commercial television broadcast signals.

(e) Carriage of additional broadcast television signals on such system shall be at the discretion of the cable operator, subject to the retransmission consent rules, § 76.64. A cable system may also carry any ancillary or other transmission contained in the broadcast television signal.

(f) Calculation of Broadcast Signals Carried. When calculating the portion of a cable system devoted to carriage of local commercial television stations under paragraph (b) of this section, a cable operator may count the primary video and program-related signals of all such stations, and any alternative-format versions of those signals, that they carry.

(g) Channel sharing carriage rights. A broadcast television station that voluntarily relinquishes spectrum usage rights under 73.3700 of this chapter in order to share a television channel and that possessed carriage rights under section 338, 614, or 615 of the Communications Act of 1934 (47 U.S.C. 338; 534; 535) on November 30, 2010, shall have, at its shared location, the carriage rights under such section that would apply to such station at such location if it were not sharing a channel.

Note 1 to § 76.56: Section 76.1620 provides notification requirements for a cable operator who authorizes subscribers to install additional receiver connections, but does not provide the subscriber with such connections, or with the equipment and materials for such connections.

Note 2 to § 76.56: Section 76.1614 provides response requirements for a cable operator who receives a written request to identify its must-carry signals.

Note 3 to § 76.56: Section 76.1709 provides recordkeeping requirements with regard to a cable operator's list of must-carry signals.

Credits

[58 FR 17360, April 2, 1993; 58 FR 39161, July 22, 1993; 58 FR 40368, July 28, 1993; 59 FR 62344, Dec. 5, 1994; 65 FR 53614, Sept. 5, 2000; 66 FR 16553, March 26, 2001; 66 FR 48981, Sept. 25, 2001; 73 FR 6054, Feb. 1, 2008; 77 FR 30426, May 23, 2012; 77 FR 36192, June 18, 2012]

SOURCE: 37 FR 3278, Feb. 12, 1972; 58 FR 7993, Feb. 11, 1993; 58 FR 17357, April 2, 1993; 58 FR 19626, 19627, April 15, 1993; 58 FR 21109, April 19, 1993; 58 FR 27670, May 11, 1993; 58 FR 29753, May 21, 1993; 58 FR 33561, June 18, 1993; 58 FR 42250, Aug. 9, 1993; 58 FR 60395, Nov. 16, 1993; 59 FR 25342, May 16, 1994; 59 FR 52344, Dec. 5, 1994; 61 FR 18510, April 26, 1996; 61 FR 28708, June 5, 1996; 63 FR 38094, July 15, 1998; 64 FR 6569, Feb. 10, 1999; 64 FR 28108, May 25, 1999; 65 FR 68101, Nov. 14, 2000; 66 FR 7429, Jan. 23, 2001; 67 FR 680, Jan. 7, 2002; 69 FR 2849, Jan. 21, 2004; 70 FR 21670, April 27, 2005; 70 FR 76529, Dec. 27, 2005; 80 FR 11330, March 3, 2015, unless otherwise noted.

AUTHORITY: 47 U.S.C. 151, 152, 153, 154, 301, 302, 302a, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 338, 339, 340, 341, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572,

Notes of Decisions (8)

Current through May 28, 2015; 80 FR 30382.

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47 C.F.R. § 95.25

§ 95.25 Land station description.

Currentness

(a) A land station is a unit which transmits from a specific address as determined by the licensee.

(1) An exact point as shown on the license; or

(2) An unspecified point within an operating area (an area within a circle centered on a point chosen by the applicant) as shown on the license, for a temporary period (one year or less).

(b) The point from which every land station transmits must be within an area where radio services are regulated by the FCC.

(c) [Reserved]

(d) A small control station is any control station which:

(1) Has an antenna no more than 6.1 meters (20 feet) above the ground or above the building or tree on which it is mounted (see § 95.51); and

(2) Is:

(i) South of Line A or west of Line C; or

(ii) North of Line A or east of Line C, and the station transmits with no more than 5 watts ERP (effective radiated power).

(e) A small base station is any base station that:

(1) Has an antenna no more than 6.1 meters (20 feet) above the ground or above the building or tree on which it is mounted (see § 95.51); and

(2) Transmits with no more than 5 watts ERP.

(f) Each base station and each control station with an antenna height greater than 6.1 meters (20 feet) must be separately identified on Form 605. See §§ 95.25(d) and (e) and 95.51 of this part.

Credits

[53 FR 47715, Nov. 25, 1988; 53 FR 51625, Dec. 22, 1988; 63 FR 68974, Dec. 14, 1998]

SOURCE: 42 FR 8332, Feb. 9, 1977; 48 FR 35237, Aug. 3, 1983; 79 FR 60099, Oct. 6, 2014, unless otherwise noted.

AUTHORITY: 47 U.S.C. 154, 301, 302(a), 303, and 307(e).

Current through May 28, 2015; 80 FR 30382.

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15-1240

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

MONTGOMERY COUNTY, MARYLAND, ET AL.,
PETITIONERS

v.

FEDERAL COMMUNICATIONS COMMISSION
AND THE UNITED STATES OF AMERICA,
RESPONDENTS

CERTIFICATE OF SERVICE

I, Maureen K. Flood, hereby certify that on June 9, 2015, I electronically filed the foregoing Brief for Respondents with the Clerk of the Court for the United States Court of Appeals for the Fourth Circuit by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

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